



5-1992

The Legal Status of Women in Early Tennessee: Knox, Jefferson, and Blount Counties, 1792-1843

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Recommended Citation

Crawford, Margaret L., "The Legal Status of Women in Early Tennessee: Knox, Jefferson, and Blount Counties, 1792-1843. " Master's Thesis, University of Tennessee, 1992.
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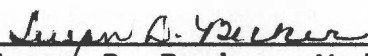
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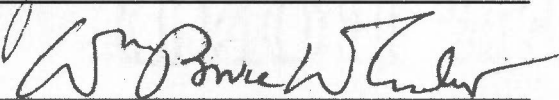
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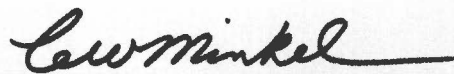
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**THE LEGAL STATUS OF WOMEN IN EARLY TENNESSEE:
KNOX, JEFFERSON, AND BLOUNT COUNTIES, 1792-1843**

A Thesis

Presented for the

Master of Arts

Degree

The University of Tennessee, Knoxville

Margaret L. Crawford

May 1992

To my husband, Duncan,
and my children, Rebecca and Adam

ACKNOWLEDGMENTS

I thank my major professor, Dr. Susan Becker, for her guidance and direction. I also thank the other committee members, Dr. James Cobb and Dr. Bruce Wheeler, for their comments and suggestions. Special thanks for invaluable assistance goes to Doris Martinson, archivist of the Knox County Archives, and her staff: Bonita Smith, assistant archivist, Debra Patrick and Laura Basilio, archives assistants. For their help I thank Steven Cotham, Director of the Calvin M. McClung Historical Collection, and his staff, particularly, Ted Baher and Mary Perona. Also helpful were William Beintema and his staff at the University of Tennessee Law Library. Finally, I am grateful to Pamela Brune for her assistance in setting up the computer program used in computation of thesis data, as well as her help in tabulation of thesis statistics.

ABSTRACT

This thesis focuses on three East Tennessee counties, Knox, Jefferson, and Blount, to determine whether the legal status of women in the Southwest Territory changed when the territory became the state of Tennessee in 1796. The dates of the study, 1792-1843, begin with the formation of Knox and Jefferson counties when Tennessee was the Southwest Territory, continue through the state's early years, and end with the year a married women's property act was first introduced into the legislature. The major sources of research include the court records of the three counties and the legislative acts passed by Tennessee's General Assembly during the years 1796 to 1843. Areas of the law which affected women include *feme covert* conveyances, marriage settlements and contracts, divorces, dower, and inheritance. Examination of the statutes and court records pertaining to these areas of law reveals changes occurred gradually, but steadily, throughout the period.

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CHAPTER I

INTRODUCTION

[Samuel] Callaway was at the side of [Daniel] Boon [sic] when, approaching the spurs of the Cumberland Mountain, and in view of the vast herds of buffalo grazing in the vallies between them, he exclaimed, "I am richer than the man mentioned in scripture, who owned the cattle on a thousand hills--I own the wild beasts of more than a thousand vallies."¹

The stories of long hunters and packmen (traders), as well as the accounts of speculator-explorers like Dr. Thomas Walker and James Smith who kept journals, told of rich land and abundant game across the mountains in what is now Tennessee. The tales excited many who were eager to settle the region or to increase their fortunes. As early as 1745, even the colony of Virginia tried to encourage settlement of its western lands by granting a land patent for 120,000 acres.²

Settlement, however, was first delayed by the French and Indian War and later by the Proclamation of 1763, an act of the British government which prohibited settlement west

¹J. G. M. Ramsey, Annals of Tennessee (Charleston, S.C.: Walker and Jones, 1853; reprint, Kingsport, Tenn.: Kingsport Press for the East Tennessee Historical Society, 1967), 69. Ramsey does not reveal his source for the quote.

²Ibid., 65-66; Samuel Cole Williams, Early Travels in the Tennessee Country, 1540-1800 (Johnson City, Tenn.: The Watauga Press, 1928), 165-74, 203-7; Samuel Cole Williams, Dawn of Tennessee Valley and Tennessee History (Johnson City, Tenn.: The Watauga Press, 1937), chap. 27.

of the Appalachians. The delays were only temporary, and treaties with the Iroquois and Cherokee soon opened the area to speculators and settlers. The first settlement was established in 1768 at Watauga Old Fields, an Indian clearing on the Watauga River, but others soon followed along the banks of the Holston and Nolichucky Rivers. Many of Tennessee's first settlers came from the back country of Virginia and North Carolina; others made the trip southward from Pennsylvania.³

With the advent of the American Revolution a few years later, the settlers organized themselves into a committee of safety modeled after North Carolina's temporary wartime government and petitioned the state for admission as the "District of Washington." In 1777, Washington District became Washington County, North Carolina, which encompassed most of present-day Tennessee (see Figure 1, Appendix). The North Carolina legislature, in 1783, created Davidson County, situated in the Cumberland River area of Middle Tennessee. By the time North Carolina ceded all its transmontane land to Congress in December, 1789, five additional counties had been formed from the two parent counties (see Figure 2, Appendix). For judicial purposes the counties formed from Washington County were grouped together as the

³Stanley J. Folmsbee, Robert E. Corlew, and Enoch L. Mitchell, Tennessee: A Short History (Knoxville: University of Tennessee Press, 1969), 48-57; Thomas P. Abernethy, From Frontier to Plantation in Tennessee: A Study in Frontier Democracy (Memphis: Memphis State College Press, 1955), 1-10.

Washington District, and those counties formed from Davidson became the Mero District.⁴

In May, 1790, the North Carolina cession became the Southwest Territory, and North Carolinian William Blount was appointed territorial governor. A year later, Blount selected the settlement begun by James White as the capital of the territory and, in honor of Secretary of War Henry Knox, named the new town Knoxville. In 1792, Blount built a home in Knoxville and moved his family there; in the same year, Knox County and Jefferson County were created from Greene and Hawkins Counties (see Figure 3, Appendix). William Blount organized these two counties into a third judicial district, the "District of Hamilton."⁵ As each county in the territory was organized, the county government was established and court officers--justices of the peace, sheriffs, constables, clerks, and county attorneys--were appointed. Counties which were a part of North Carolina before the cession already had established courts. Each county had an Inferior Court of Pleas and Quarter Sessions which was responsible for such legal business as probate of wills, dower, and land disputes. In each of the three judicial districts there was a Superior Court of Law and

⁴Folmsbee, Corlew, and Mitchell, 60-62, 73-77, 98.

⁵Ibid., 98-101; The Blount Journal, 1790-1796 (Nashville: The Tennessee Historical Commission, 1955), 76-77.

Equity whose three judges handled divorces, criminal matters, as well as cases appealed from the county courts.⁶

In 1795, Blount County was added to the Hamilton District (see Figure 4, Appendix), and a territorial census revealed there were more than enough residents for admission to the Union. Governor Blount called for a constitutional convention which was held in January, 1796. Although the state's first constitution was patterned after North Carolina's, the influence of former Pennsylvanians in the convention was also felt as some features of the document were derived from that state's constitution.⁷

Without waiting for approval from Congress, Tennessee began functioning as a state. John Sevier was elected governor; members of the legislature were elected and met; electors for the 1796 presidential race were chosen; and plans were made for a popular election of Congressional representatives. Partisanship in Congress almost delayed Tennessee's admission until after the presidential election, but a compromise was accepted in which the state would be admitted with only one representative. On June 1, 1796, Tennessee became the sixteenth state of the Union.⁸

⁶William R. Garrett and Albert V. Goodpasture, History of Tennessee: Its People and Its Institutions (Nashville: Brandon, 1900), 105-6.

⁷Folmsbee, Corlew, and Mitchell, 101, 106-7.

⁸Ibid., 110-12.

Political histories which chronicle the statehood process, however, generally fail to include women's experiences. Although a few volumes of collected essays on women were published in the nineteenth century, scholarly interest in the history of American women did not begin until the 1930s. Contemporary historians, while acknowledging the importance of the early histories, regard the works as anecdotal instead of analytical. The rise of social history as a discipline in the 1960s and 70s, as well as emphasis on women's "liberation," stimulated interest in women's history during the last two decades.

An early monograph concentrating on colonial American women is Julia Cherry Spruill's Women's Life and Work in the Southern Colonies.⁹ Spruill, using an impressive number of seventeenth- and eighteenth-century records, researched the legal/social status as well as the everyday life of women in the southern colonies of Maryland, Virginia, Georgia, and the Carolinas. Her sources were laws and statutes of the five colonies in the study, court minutes, contemporary newspapers, journals and letters, as well as British documents. The topics of most value to this thesis concern the legal rights of women in the southern colonies and their businesses. Categories dealing with women's legal position include inheritances, dower rights, child custody, marriage

⁹Julia Cherry Spruill, Women's Life and Work in the Southern Colonies (Chapel Hill: University of North Carolina Press, 1938; reprint, New York: W. W. Norton & Co., 1972).

settlements, and separate maintenances. Spruill found that the majority of businesswomen in the colonies were widows, some continuing their husband's business, others, such as milliners or dressmakers, starting their own. Although Spruill neglected to draw conclusions from the material she located, her work is a valuable tool because of its research.

Another early book is Elisabeth A. Dexter's Colonial Women of Affairs: Women in Business and the Professions before 1776.¹⁰ Supporting the "thesis of decline," Dexter maintained that the colonial era was a "golden age" for women which declined after the Revolution. Dexter's work is influential for it defines the parameters for much of the recent historiography on women. Within the last fifteen years, the central questions for many of the women's histories have been: Was there progress or decline for women? Was there a turning point in the history of women? Did the Revolution raise or lower women's status?¹¹

Daniel Scott Smith's article, "Family Limitation, Sexual Control, and Domestic Feminism in Victorian America," and Carl Degler's book, At Odds: Women and the Family in America from the Revolution to the Present, argue against

¹⁰Elisabeth A. Dexter, Colonial Women of Affairs: Women in Business and the Professions before 1776 (Boston: Houghton Mifflin, 2nd ed., 1931).

¹¹Suzanne Lebsock has a good discussion of Dexter's thesis of decline in Free Women of Petersburg, 48-49, 50-53.

Dexter's thesis of decline.¹² Contending that nineteenth-century women gained in importance through the family, they cite companionate marriage and a declining birth rate as the chief reasons for the progress.

Some of the revisionist scholarship is regional such as Laurel Thatcher Ulrich's Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750, an analysis of women who lived in the northern colonies of Maine, New Hampshire, and Massachusetts.¹³ Ulrich's title refers to the custom of address in which seventeenth-century women of ordinary status were called Goodwife, or Goody. Ulrich writes about the ordinary woman and commonplace activities such as housekeeping and childbearing. Ulrich does not view women's history as a strict linear progression from colonial to later times, but sees instead a complex winding path with both losses and gains in the status of women. In Ulrich's estimation, the colonial period is neither a golden age nor a time of limited opportunities for women. Ulrich's study also asserts that certain features thought to be earmarks of the nineteenth century (enhanced

¹²Daniel Scott Smith, "Family Limitation, Sexual Control, and Domestic Feminism in Victorian America," in Clio's Consciousness Raised: New Perspectives on the History of Women, ed. Mary S. Hartman and Lois Banner (New York: Harper & Row, 1974); Carl Degler, At Odds: Women and the Family in America from the Revolution to the Present (New York: Oxford University Press, 1980).

¹³Laurel Thatcher Ulrich, Good Wives: Image and Reality in the Lives of Women in Northern New England (New York: Oxford University Press, 1980).

motherhood, idealistic marital love, and extreme piety) were present before 1750 in northern New England.

Another of the revisionist works which disputes Dexter's thesis is Liberty's Daughters: The Revolutionary Experience of American Women, 1750-1800 by Mary Beth Norton.¹⁴ Disagreeing with the assertion that industrialism caused women to lose status, Norton thinks the Revolution had a major positive impact on women's history. She does concede that women's stature in their private lives, rather than in the public sphere, was affected because changes came in women's self-esteem, personal aims, and in family organization instead of in legal reform or female enfranchisement. According to Norton's research, the war disrupted normal American family life but women gained a sense of self-worth from assuming new responsibilities in place of their absent husbands. Egalitarian marriages, children's choice of marital partners or to remain unmarried, and less authoritarian childrearing practices are presented as evidence that some families altered "patriarchal patterns" in the postwar years. Norton believes that republican rhetoric, which esteemed the virtuous and patriotic citizen, played a part in enhancing the role of women as nurturers of such citizens. Women's enhanced role also served as the stimulus for improving formal education for women. Norton

¹⁴Mary Beth Norton, Liberty's Daughters: The Revolutionary Experience of American Women, 1750-1800 (Boston: Little, Brown & Co., 1980).

concludes that, in spite of gains, post-Revolutionary women were still limited by the feminine sphere which was more nearly equal, but nevertheless still confining.

Linda K. Kerber, author of Women of the Republic: Intellect and Ideology in Revolutionary America, also analyzes the effect of the Revolution on women but interprets the data differently from Mary Beth Norton.¹⁵ Kerber's sources include some of the same manuscript collections, correspondence, and diaries used by Norton. Both Kerber and Norton agree that the Revolutionary War increased the political awareness of women. Kerber, however, disagrees with the significance placed upon the war by Norton, and thinks there were few lasting effects because the role of women was "severely limited" and they "remained on the periphery of the political community" ¹⁶ One of the factors on which Kerber bases her interpretation is coverture. Derived from the concept that a married couple acted as one person, coverture placed a wife's property under the "protection" of her husband, and also prevented the wife from making contracts or bringing lawsuits unless joined by her husband. Kerber believes the fact that coverture was not eradicated early in the new republic is evidence that republican principles did not apply to women. Kerber credits both the

¹⁵ Linda K. Kerber, Women of the Republic: Intellect and Ideology in Revolutionary America (Chapel Hill: University of North Carolina Press, 1980).

¹⁶ Kerber, 12.

republic's political revolution and the industrial revolution with improving women's educational opportunities. Like Norton, she places the impetus for some of the changes on the republican vision of motherhood and its responsibility for rearing good citizens. Kerber maintains that "Republican Motherhood" was certainly an important stage in the integration of women to America's political system, but that it also proved to be restrictive because it limited women to a sphere apart from men and inhibited them from taking full advantage of the republican legacy.

A small body of historical scholarship deals specifically with women's legal status, such as Nancy F. Cott's article, "Divorce and the Changing Status of Women in Eighteenth-Century Massachusetts," which draws primarily on Massachusetts' early laws and case records from 1692-1786 to study divorce.¹⁷ Cott's research shows a gradual increase in the number of divorce petitions and decrees during most of the period studied, and a significant increase during the decade of 1775-1786. Cott finds little direct evidence that the increase was linked to the Revolution; there were very few divorce petitions resulting from a husband's adultery with a camp follower or a wife's pregnancy during her soldier husband's absence. However, Cott

¹⁷Nancy F. Cott, "Divorce and the Changing Status of Women in Eighteenth-Century Massachusetts," WMQ, 3rd ser., XXXIII (1976), 586-614.

suggests that the assertive attitude needed to end an unsatisfactory marriage would be similar to the self-assertion that American colonists exhibited during the Revolution. She also sees a parallel between stricter enforcement of men's marital fidelity and republican ideology which touted virtue and focused on the family as the nurturer of upright citizens. According to Cott, the change in divorce decrees, which began to allow divorces solely on the grounds of husbands' adultery, implies that women were beginning to be more highly regarded in marriage and that courts recognized their improved status within the family.

Historians praise Suzanne Lebsock for her meticulous study of town records in her book The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860.¹⁸ This research focuses on the question of why women's status changed in Petersburg during the time studied, and asks whether women developed a separate culture formed by different attitudes and values than those of men. Lebsock's study shows a growth in the economic autonomy of Petersburg women: there were increases in numbers of women gainfully employed and in those purchasing real estate; separate estates were established for and by women to protect their property; more women wrote wills; and more widows chose to remain single after their husbands' death. As evidence of a

¹⁸ Suzanne Lebsock, The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860 (New York: W. W. Norton and Co., 1984)

distinctive women's culture, Lebsock argues that the women of Petersburg tended their affairs with a "personalism" which the men did not exhibit. Property dispensation by women in wills or deeds of gift was not equal but according to individual need or favoritism, especially towards daughters. Also included as evidence are the greater number of manumissions by women and their partiality to certain slaves. According to Lebsock, charitable organizations were a distinguishing part of women's culture, but after men began to form their own groups with women as auxiliary members, Petersburg women lost influence over the public sphere.

The work most influencing my own thesis research is Women and the Law of Property in Early America by Marylynn Salmon.¹⁹ Her study examines property law changes affecting women during America's late colonial and early national stages, 1750 to 1830, and encompasses the colonies and states of Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, and South Carolina. Salmon first examined the laws and then searched for cases in which the law was applied. She also analyzed legal changes occurring over the years to determine if they represented progress or decline in women's status. Finally, she analyzed the relationship between restrictive laws and laws which reflected

¹⁹ Marylynn Salmon, Women and the Law of Property in Early America. (Chapel Hill: University of North Carolina Press, 1986).

community values. Salmon concluded that in America's early national period new attitudes toward women's equality and education stimulated gradual reform in women's property law which culminated in the passage of married women's property acts in the second half of the nineteenth century.

In focusing on women's legal status, Salmon finds much diversity in colonial laws, attributable to differences in settlement of the colonies and the diverse backgrounds of their settlers. Her examination of property law in the colonies reveals that, although single women enjoyed the same property rights as men, married women had no property rights. Upon marriage, a woman's personalty--clothing, jewelry, stocks, money, even wages earned--became the exclusive property of her husband. A woman also relinquished control of all real property to her husband, who managed the property and retained any rents and profits, although he was prohibited from selling the property without the consent of his wife. The southern colonies, recognizing that a woman might be coerced into selling land, developed a legal safeguard, the private examination, to protect women. In a separate room with only the wife present, a court officer would read the conveyance deed to ensure that the woman understood that she was renouncing all future claims to the land. In the northern colonies, Connecticut adopted a statute in 1723 requiring private examinations; Pennsylvania and New York enacted similar statutes late in the colonial

period (1770 and 1771); but Massachusetts required only the wife's signature on the deed which could be signed privately at home.

Although not common during the colonial period, another legal protection was the separate estate in which a wife owned and managed property apart from her husband. By the late eighteenth century, separate estates, or marriage settlements, were more numerous, which Salmon attributed not only to the economic uncertainty and frequent depressions associated with the growth of capitalism, but also to changing attitudes concerning women's property rights.

In Salmon's study, all of the colonies and states adhered to the dower rule for women which granted a widow one-third of any real property owned by her husband during the marriage. Although a husband could devise more land to his wife by will, most men died intestate. The dower lands did not belong to the widow, but represented a life estate from which she could use the profits. In some cases, widows were prohibited from "wasting" the land which meant no trees could be cut or the land could not be mined. Salmon noted that many widows were unable to exist on their inheritance and were forced to seek public assistance. If property was sufficient for their support, many women chose not to remarry. In South Carolina, Salmon's work indicated that widows with property who considered remarriage frequently made marriage settlements which allowed them to manage the land

and control any profits. Salmon thought the decisions of widows concerning both remarriage and marriage settlements were evidence that women were dissatisfied with restrictive property rights and wished to manage what they owned.

According to Salmon, Massachusetts and Connecticut had the most liberal divorce laws, a reflection of Puritan custom which viewed marriage as a civil contract instead of a religious sacrament. Each colony granted divorces *a vinculo matrimonii* (absolute divorces) which allowed remarriage. However, in order to obtain a divorce, wives had to prove abuse and neglect in addition to infidelity. The other colonies in Salmon's study granted divorces *a mensa et thoro* (legal separations), and after the Revolution, with the exception of South Carolina, also granted absolute divorces.

Salmon also found that because a married woman owned no property that could be seized to satisfy a judgment against her, she was unable to make a contractual agreement unless she was contracting jointly with her husband. A wife was permitted to act as her husband's agent, especially if he were away for extended periods. The colony of South Carolina allowed wives to operate as independent businesswomen--*feme sole* traders--with the written, or tacit, consent of their husbands. Pennsylvania limited *feme sole* trader status to women deserted by their husbands.

Salmon concluded that the Revolution directly affected women's legal status in only three areas: (1) absolute divorce was granted in all the new states except South Carolina; (2) primogeniture and double shares for eldest sons were abandoned; (3) daughters gained equal rights to family property. She found that most of the changes occurring in the period studied were part of an evolutionary process which, by the end of the nineteenth century, allowed women greater independence and the autonomy to own property regardless of their marital status.

Taking the model constructed by Marylynn Salmon and applying it to Tennessee during its territorial and early statehood period, this thesis focuses on the legal status of women in three East Tennessee counties, Knox, Jefferson, and Blount. Although much of Salmon's research concentrated on the colonial period, her study also followed the development of property law up to 1830 in the early national period. For this reason, it is appropriate to pattern a thesis study after Salmon's work. In addition, both the colonial years and the early years of Tennessee were settlement phases in each region's history. As Salmon showed the evolution of certain areas of law in the colonies and states she researched, this thesis attempts the same for the East Tennessee counties. The dates of the study, 1792-1843, begin with the formation of Knox and Jefferson Counties when Tennessee was the Southwest Territory, continue through the

state's early years, and end with the year a married women's property bill was first introduced into the legislature. These counties were all created while Tennessee was a territory and were part of the judicial district known as the Hamilton District. Jefferson and Knox, formed at the same time, abut one another and Blount was shaped from Knox. All three counties possess records dating to their formation, although some records are missing or destroyed.

The central question of this thesis is whether the legal status of women in the Southwest Territory changed when the territory became the state of Tennessee in 1796, and, if so, in what ways. The study focuses on conveyances by married women, marriage settlements, divorces, dower, and inheritance. Did Tennessee require private examinations for *feme covert* conveyances? Did couples in this state employ marriage settlements or contracts? Were Tennessee women allowed absolute divorces? Did daughters inherit land equally with their brothers? Did widows inherit more than their dower share? The major sources for this study include the court records of Knox, Jefferson, and Blount Counties, and the legislative acts passed by the Tennessee General Assembly.

As Marylynn Salmon has found, in the eighteenth and early nineteenth centuries when a woman married, major changes took place in her life. Although single women held the same property rights as men, married women's rights were

subsumed under the legal shelter of their husbands. Thus, it is necessary to study the marriage laws and customs of Tennessee in order to determine how women in Knox, Jefferson, and Blount Counties began their married life.

Chapter II

MARRIAGE AND DIVORCE

Marriage

American Puritans, influenced by sixteenth-century reformers Martin Luther and John Calvin, did not regard marriage as a sacrament in which couples were joined by a religious ceremony, but instead as a civil contract between two consenting adults which was performed in a secular setting presided over by a civil magistrate. The Puritans' separation of marriage from ecclesiastical concerns does not mean that the covenant was not esteemed; they believed marriage was sanctioned by God as evidenced by the "First Marriage" between Adam and Eve and so elevated it to a prominent status within Puritan society.¹

By law, Puritan couples announced their intentions to marry, or published the marriage banns, at three consecutive public meetings or by affixing a written note to the door of the meetinghouse. Once the pair was engaged, the agreement was as binding as marriage and if one of the pair later

¹Edmund S. Morgan, The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England (New York: Harper & Row, 1966), 29-30; Roderick Phillips, Putting Asunder: A History of Divorce in Western Society (Cambridge: Cambridge University Press, 1988), 194-95.

refused to marry the other, he or she could be sued for breach of promise.²

Marriage age in the Puritan colonies was earlier than that of Europe. In his study of Plymouth, John Demos found that during the first years of the colony males married at about age twenty-seven, but by the time the colony was subsumed by Massachusetts Bay the male age at marriage had dropped to just under twenty-five. During the same period, the marriage age of women rose from slightly over twenty to twenty-two. Greven's research in colonial Andover reflected the same age decrease for men who married; however, the marriage age for women in Andover in three succeeding generations rose from 22.3 years to 24.5 years and then declined to 23.2 years. In Dedham, Massachusetts, the average age for men to marry was twenty-five and, for women, twenty-three.³

Studies of the settlement period of the Chesapeake region indicate that the average marriage age for women was higher than in New England because many of the marriageable females were indentured servants. Marriage had to be post-

²Morgan, 31-33.

³John Demos, A Little Commonwealth: Family Life in Plymouth Colony (New York: Oxford University Press, 1970), 151; Philip J. Greven, Jr., Four Generations: Population, Land, and Family in Colonial Andover, Massachusetts, (Ithaca: Cornell University Press, 1970), 206, 208; Kenneth A Lockridge, A New England Town The First Hundred Years: Dedham, Massachusetts, 1636-1736 (New York: W. W. Norton & Co., 1970), 66.

poned four or more years until the end of servitude. Most of the servant women were between eighteen and twenty-two years of age when they arrived in the Chesapeake; at the end of their indenture they probably would have been in their mid-twenties.⁴

Historian Marylynn Salmon has pointed out that the legal standing of a woman changed when she married. Under English common law a married woman's legal position was secondary to her husband's; she could no longer sue in her own name or enter into a contract by herself. All her personal property--clothing, furniture, money, even wages--became her husband's as well as the rents and profits from any property she owned. The principle upon which the common law was based was "unity of person." In 1765, Sir William Blackstone argued that marriage transformed the husband and wife into one person in a legal sense. The husband was thus responsible for protecting his wife and performing all legal duties for both of them. This theory was based on the concept of an ideal marriage with spouses whose interests were always identical, and with husbands who always showed concern for their wives. Because this view of marriage was unrealistic, changes occurred in the laws and statutes which defined the common law. Protections for women concerning

⁴Jim Potter, "Demographic Development and Family Structure" in Colonial British America: Essays in the New History of the Early Modern Era, ed. Jack P. Greene and J. R. Pole (Baltimore: The Johns Hopkins University Press, 1984), 142.

conveyances, dower, and mortgages began to be incorporated into some laws. Although each of the American colonies based their laws on English common law, each colony interpreted the law differently and during the seventeenth and eighteenth centuries developed its own unique set of laws.⁵

Laws concerning marriage enacted by North Carolina in 1778 were adopted by Tennessee in 1796. Ordained ministers of every church denomination and justices of the peace were empowered by the state to marry couples. A minister could charge a fee of \$2.50 for performing the ceremony. Ministers and justices of the peace were fined \$125 for joining couples in marriage who did not have a marriage license or whose marriage banns had not been published three times. There was also a penalty if ministers tried to circumvent the law by going out of the state to marry a couple.⁶

Tennessee laws enacted in 1819 were probably protections for creditors rather than married women but they emphasized the "unity of person" concept. The law stated that any pending lawsuit initiated by a single woman (*feme sole*) would not be dropped when she married, but her husband, as soon as possible after the marriage, must enter his

⁵ Marylynn Salmon, Women and the Law of Property, 14-15; Marylynn Salmon, "The Property Rights of Women in Early America" (Ph.D. diss., Bryn Mawr College, 1980), 3-5, 13.

⁶ John Haywood and Robert L. Cobbs, "Marriages," in The Statute Laws of the State of Tennessee, of a Public and General Nature, 2 vols. (Knoxville: F. S. Heiskell, Printer and Publisher, 1831), 219-20.

name to the suit as a plaintiff jointly with his wife. The husband would then have to give bond for the prosecution of the suit and the original security would be dismissed. Likewise, lawsuits in which the *feme sole* was a defendant would not be voided upon marriage, and afterwards the husband would be listed as a co-defendant.⁷

Laws concerned with the prevention of certain types of marriages--bigamy, consanguinity, and miscegenation--first appeared in 1820 in the records of the Tennessee General Assembly. Bigamy, in which a person married another while his or her spouse was still alive, was a felony punishable by imprisonment at hard labor. A second offense was punishable by death. The law did not extend to persons whose mates did not live in the United States if they had been separated for over seven years and were unsure if their spouses were still living. The punishment for bigamy set forth in an 1829 penal law revision provided for incarceration in a jail or penitentiary for two to twenty-one years. The 1829 revision also reduced the separation time for persons with non-resident spouses from seven to five years.⁸

In 1822, it became illegal for any white man or woman to marry a Negro, mulatto, or person of mixed blood, free or

⁷Tennessee Session Laws: Public Acts (Oct. 26, 1819), microfiche 24, 40-41.

⁸Tennessee Session Laws: Public Acts, (Jul. 20, 1820), microfiche 28, 22; Tennessee Session Laws: Public Acts, (Dec. 30, 1829), microfiche 53, 29.

slave, and the penalty for doing so was \$500. The clerk who issued a marriage license to a racially mixed couple, and the minister or justice of the peace who married them, were also subject to \$500 fines.⁹

Consanguinity described an incestuous marriage in which a man or woman married a close relative (including niece, nephew, daughter- or son-in-law, stepparent, stepchild, or stepgrandchild). Marriage between cousins was allowed, however, even if they were first cousins. The offense was punishable by imprisonment for five to twenty-one years.¹⁰

It is impossible to determine what the average marriage age was for males and females in Knox, Blount, and Jefferson Counties between 1792 and 1843 because the ages of the bride and groom were not generally recorded on Tennessee marriage licenses and bonds. In order to determine the numbers of marriages occurring, this researcher looked at the Knox County marriage records of each year from 1792 through 1817 and of every fifth year from 1820 through 1840; there was no demographic information included in any of the records. The only clue that marriage age, at least for females, might be younger than in New England and the Chesapeake region is the presence of data in unrelated cases. The divorce petition of Nancy Formwalt of Knox County states that Nancy was

⁹ Tennessee Session Laws: Public Acts, (Aug. 21, 1822), microfiche 32, 22-23.

¹⁰ Tennessee Session Laws: Public Acts, (Dec. 30, 1829), microfiche 53, 30.

fifteen when she married John Formwalt in 1817. In a private act passed in 1833, the legislature allowed Mary Ann Lewis Pageot to convey real estate provided the proper procedure concerning private examinations was followed. Mary Ann, the wife of Alphonso Pageot, was under twenty-one and a minor. Two isolated cases do not provide enough proof upon which to base any conclusions. Tennessee statutes contain no age limit requirements for marriage which would shed light on the subject.¹¹

In Knox County there were approximately 117 marriage licenses and bonds applied for in 1830. Population statistics for Knox County for the same year show the number of free white males between twenty and forty years of age to be 1,569. Free white females between the same ages number 1,644--75 more females than males. The ages chosen for the sample represent the years within which most males and females probably married. Of course, there would have been brides and grooms both younger and older, but most were probably between the ages of twenty and forty. It is likely the marriage age decreased as the century progressed and the

¹¹Gale W. Bammon and Debbie W. Spero, Tennessee Divorces, 1797-1858 (Nashville: published by the author, 1985), 34; Tennessee Session Laws: Private Acts (Nov. 1, 1833), microfiche 68, 29.

areas became more settled as the New England statistics show.¹²

Although the ideal marriage was based on the common law principle, "unity of person," in which the married couple thought and acted as one, in reality, some marriages did not attain the ideal. In order to deal with dysfunctional marriages, after the Revolution all the states except South Carolina allowed absolute divorce in which the divorced partners were permitted to marry again. In 1799, Tennessee became the first southern state to pass a divorce statute.

Divorce

Glenda Riley's recently published work, Divorce: An American Tradition, noted that the first colonists in America to permit divorces were the Separatists of Plymouth Colony, although the first divorce actually granted was by Puritans in the Massachusetts Bay Colony. Before their migration to the New World in 1620, Separatists viewed marriage and divorce as civil concerns, as had Luther and Calvin. During the Separatists' stay in Holland, they were also probably influenced by liberal Dutch ideas concerning divorce.¹³

¹²Tennessee, Fifth Census (1830), microfilm reel 1, 108; Knox County marriage bonds and/or licenses (1830), microfilm reel C-105, Knox County WPA records list 111 marriage licenses for 1830.

¹³Glenda Riley, Divorce: An American Tradition (New York: Oxford University Press, 1991), 11-12.

Although the Puritan leaders preferred that couples remain married, they realized that some marriages were dysfunctional and should be dissolved. By permitting divorce, they hoped to preserve the family as the Puritan community's basic social unit, fundamental to harmony and accord within the colony. Absolute divorce which permitted remarriage allowed divorced spouses to form more congenial future marriages.¹⁴

Marylynn Salmon found no other American colony which followed the lead of the Puritan colonies in granting absolute divorces. After 1675, New York reversed its early policy of divorce which allowed remarriage and thereafter awarded only separations. A 1705 Pennsylvania statute permitted annulment for consanguinity, but only allowed divorce from bed and board for adultery, bigamy, and sodomy. Salmon's research demonstrated that the southern colonies conferred legal separations rather than absolute divorces.¹⁵

With the exception of South Carolina, divorce practices changed after the American Revolution and all the new states granted absolute divorces. In states previously allowing divorce with remarriage, there were increases in the number of divorce petitions filed. Nancy Cott, in her research on divorce petitions

¹⁴Ibid., 11; Salmon, Women and the Law of Property, 61; Lynn Carol Halem, Divorce Reform: Changing Legal and Social Perspectives (New York: The Free Press, A Division of Macmillan Publishing Co., Inc., 1980), 13.

¹⁵Salmon, Women and the Law of Property, 61-62.

Massachusetts, attributed this increase partly to Revolutionary ideals which extolled virtue for both males and females (in particular, marital fidelity), and repudiated British "corruption" (the male ruling class's loose sexual standards). Cott also suggested that the Revolution caused attitude changes which influenced divorce in Massachusetts. Spouses were less likely to resign themselves to unhappy marriages, instead asserting their legal rights to end them.¹⁶

In Connecticut, Sheldon Cohen discovered a more direct link to the Revolution through his study of twenty-four divorce cases with war-related circumstances, such as husbands committing adultery while in the Continental Army, wives committing adultery while their husbands were away on military duty, or husbands who deserted to join Loyalist forces. Although these kinds of divorces comprised only one-fifth of the total number of divorce petitions filed during the war, the link is still significant. From 1786-1797, the number of divorce petitions more than doubled in Connecticut. Petitions filed during the wartime and postwar years often contained references to Revolutionary ideology such as the word "tyranny." Another case which detailed a

¹⁶Cott, "Divorce and the Changing Status of Women," 593-94, 605-6.

woman's refusal to live with her abusive husband made the analogy of a king's loss of allegiance from his subjects.¹⁷

Glenda Riley's work supports the theories of Cott and Cohen that Revolutionary rhetoric and ideology affected divorce in America. Part of her evidence is a Virginia divorce petition drawn up for a client in 1771 or 1772 by Thomas Jefferson who used the terms "liberty," "equality," and "natural right" in his argument. Similar words and ideas filled a postwar polemic supporting divorce in Pennsylvania.¹⁸ All three historians also agree that the rise in divorce was partly in response to Americans' changing views about marriage. A companionate marriage with partners more nearly equal was emerging as the ideal, but as marriage expectations rose so did disappointment with something less perfect. Couples expressed their dissatisfaction through divorce.¹⁹

Pennsylvania was the first state to enact divorce legislation after the Revolution, although its General Assembly had granted divorces since 1777. In 1799, Tennessee became the first southern state to pass a divorce statute, although the state had granted its first legislative

¹⁷Sheldon S. Cohen, "'To Parts of the World Unknown': The Circumstances of Divorce in Connecticut, 1750-1797," The Canadian Review of American Studies, vol. II, no. 3 (Winter 1980), 286-90.

¹⁸Riley, 31-32, 45.

¹⁹Cott, "Divorce and the Changing Status of Women," 613-14; Cohen, 288; Riley, 55.

divorce two years earlier. Indeed, the Tennessee statute of 1799 appears to have been modeled quite closely after Pennsylvania's law.²⁰

The two statutes contain similar grounds for which either party could obtain a divorce: impotency (incapable of procreation), bigamy, adultery, and desertion. Tennessee, however, set the length of time allowed for unreasonable absence at two years, in contrast to Pennsylvania's four years. Both laws also contained an unusual provision for persons who had married upon hearing rumors that their spouses were dead. The new marriage was not deemed adulterous or bigamous if the absent spouse then returned, but the returning spouse could insist that his or her former marriage be restored. Divorces were authorized for returning spouses who wished the original marriages dissolved.²¹

Tennessee divorces alleging adultery were barred if the accused party proved that his or her spouse was guilty of the same crime, or if the accuser, knowing of the indiscretion, received the spouse back into the "conjugal society" of the marriage. After a divorce in which adultery was proven, the guilty party was not allowed to marry the person with whom the crime was committed while the divorced spouse was still living. A woman found guilty of adultery who

²⁰Phillips, 155-56, 445.

²¹Phillips, 156; Tennessee Session Laws (Oct. 26, 1799), microfiche 2, 195-96.

later cohabited with her partner in crime was prevented legally from conveying or devising any property she owned.²²

In a divorce action, the injured party, "the husband in his own proper person or the wife by her next friend," could petition the district superior court asking that the spouse be subpoenaed to answer the charges.²³ The charges could not be frivolous, nor could there be collusion between the parties just for the purpose of dissolving the marriage.

After hearing the divorce complaints, judges of the superior court could either dismiss the suit or grant an absolute divorce which allowed remarriage. Wives with husbands who cruelly treated and abused them could petition the court for a legal separation, or divorce from bed and board. Alimony not exceeding one-third of the husband's income was also granted to the abused wife. However, if the husband petitioned the court for a reconciliation and his wife refused, the alimony and divorce decree were suspended, although the husband was required to treat his wife well or the decree would be reinstated.²⁴

²² Ibid., 196-97.

²³ Ibid., 195. The law is not specific as to whether the "next friend" had to be male, although two Knox County divorce petitions in 1830 and 1832 have female next friends, one appointed by the court after the death of a male next friend. Less than half of the petitions brought by females before 1836, when the "next friend" clause was abolished, list a next friend in the court records. After 1836, there are seven divorces brought by women; four of the cases list a next friend.

²⁴ Ibid., 196-97.

It is unclear why the divorce act was repealed in 1807, although the 1799 act was reinstated two years later with a change in the jurisdiction of the courts hearing the matters. The newly established circuit courts began hearing divorces in January, 1810, after they replaced superior courts.²⁵

The law remained unchanged for the next decade. In 1819, a new provision was added allowing husbands to sue for divorce if the wife was pregnant "with a child of color" when the couple married.²⁶ A law enacted in 1831 made it less costly for females to obtain divorces. If a woman were the petitioner in a divorce case and the judge granted her the divorce, the cost of the lawsuit was charged to the husband. The law also removed for females the state requirement that four weeks' publication must be made in a newspaper requesting an absent spouse to appear in court to answer the divorce petition. Male petitioners were still required to advertise.²⁷

Five years later, in 1836, the entire law was updated, although the basic conditions for obtaining a divorce were the same. Legislators added the provision that any person

²⁵Tennessee Session Laws, (Oct. 26, 1807), microfiche 10, 154; Tennessee Session Laws, (Nov. 22, 1809), microfiche 12, 126-27.

²⁶Tennessee Session Laws: Public Acts, (Oct. 28, 1819), microfiche 24, 45.

²⁷Tennessee Session Laws: Public Acts, (December 19, 1831), microfiche 59, 35-36.

whose spouse was rendered "infamous" by conviction of a crime also had grounds for divorce. Another addition to the older statute allowed the court to dismiss any divorce action against a defendant who could prove satisfactorily that the "ill conduct" of the plaintiff was the reason for his or her own conduct.²⁸

The 1836 revision made it legal for wives, just as it had always been for husbands, to petition for divorce "in their own proper person and name" without requiring a legal stand-in or "next friend."²⁹ Petitions could be entered in circuit court, or in the new chancery courts established the preceding December during the same General Assembly session.

The statute provided for wives who were complainants in divorce actions involving adultery by requiring the husband to support and maintain his former wife and children if he were found guilty. A wife whose marriage was dissolved because of her husband's adultery also retained absolute control over any land, buildings, slaves, and goods which she owned, acquired by inheritance, as gifts, or through her own industry. She was also entitled to any personal property or slaves her husband had left in her possession. However, if the wife were the guilty party, the husband still had the legal right to any rents or profits from land belonging

²⁸ Tennessee Session Laws: Public Acts, (Feb. 19, 1836), microfiche 71, 117-23.

²⁹ Ibid., 118.

to her. Guilty wives also forfeited their right to dower, although apparently wives who were complainants in divorce proceedings were still entitled to receive it.³⁰

In the revised law, abused wives could still obtain a divorce from bed and board although there was no mention of it as a temporary situation until reconciliation could take place, as in the earlier law. The separation could be permanent, or "for a limited time as shall seem just and reasonable," or the court could decide to "make such other decree in the premises as the nature and circumstances of the case require," presumably an absolute divorce.³¹

As in the previous law, the residency requirement for filing a divorce bill remained one year. The exception involved cases where the husband moved to the state and the wife refused to follow; then the requirement was two years. The husband also had to prove that he had tried to persuade his wife to live with him, and that his move to the state was not precipitated by the desire for a divorce.³² A statute passed in 1840 granted females who had moved to Tennessee the right of obtaining a divorce after a two-year

³⁰ Ibid., 120-21.

³¹ Ibid., 121-22.

³² Ibid., 121, 117.

residency, even if the causes for the divorce occurred in another state.³³

In an 1842 amendment to the divorce law, the legislature authorized absolute divorce for cases in which bed and board divorces had previously been decreed. Although not spelled out in the amendment, this referred to cases where the wife alleged cruel treatment by her husband. After 1836, the courts were allowed to make decrees other than legal separations in cruelty cases when "the nature and circumstances of the case require," but the law did not specify if this meant dissolution of the marriage vow. The 1842 amendment also authorized courts to grant a part of the husband's real and personal property to wives who petitioned for divorce regardless of the grounds.³⁴

Circuit courts, which had replaced the superior courts in 1810, were the only courts authorized to hear divorces until judicial reorganization established chancery courts in 1835. Thereafter, divorce petitions could be decided in either court.³⁵

In addition to the courts, until 1835 divorces could also be obtained by sending a written petition to Tennes-

³³Tennessee Session Laws: Public Acts, (Jan. 6, 1840), microfiche 83, 90.

³⁴Tennessee Session Laws: Public Acts, (Feb. 4, 1842), microfiche 87, 157; Tennessee Session Laws: Public Acts, (Feb. 19, 1836), microfiche 71, 122.

³⁵Knox County's Chancery Court was formed in 1832.

see's legislature, a less costly and usually quicker method of marriage dissolution. After its initial reading in the General Assembly and its referral to a committee, the petition, if recommended, was drafted into a bill and read three separate times in the Senate and House. The General Assembly could either dismiss the petition, grant a legal separation or divorce from bed and board, dissolve the marriage, or award a divorce upon proof where the charges had to be proven in court before the divorce would be final. The statutes concerning absolute divorces and divorces from bed and board were applied in the legislature as in a regular court of law.³⁶

The authors of a 1985 article in the Tennessee Historical Quarterly argued that reform of the divorce laws in Tennessee which expanded the rights of the wife and made it easier for women to obtain divorces was based on the desire to perpetuate patriarchal marriage. Legislation which penalized husbands who abused the marriage bonds also ensured male dominance in marriage, according to the authors. Their reasoning is based on an analogy to legislation which curbed the excessive abuse of masters towards slaves, thereby sustaining slavery. In other words, they believe that

³⁶ Bamman, iii-iv.

divorce reform was motivated by the view of women as "victims" rather than as "equals."³⁷

Although many of Tennessee's divorce laws probably were inspired by the wishes of its legislators to protect women, it does not seem likely that there was any conscious effort by Tennessee lawmakers to maintain male dominance in marriage. Regardless of their intent, in fact, the changes in the law represented small gains for women in the area of divorce.

The divorce cases in this study were originally filed between 1797 and 1843 in Knox, Blount, and Jefferson Counties, or were petitions to Tennessee's General Assembly from those three counties. The earliest recorded divorce is a petition to the legislature in 1797 by Blount County resident, David Caldwell.³⁸ As with most of the divorces granted by legislative act in Tennessee, the only recorded information consists of the names of the couple, the county of residence (not always recorded), and the stated decree--in Caldwell's case the marriage was dissolved.

³⁷Lawrence B. Goodheart, Neil Hanks, and Elizabeth Johnson, "'An Act for the Relief of Females. . .': Divorce and the Changing Legal Status of Women in Tennessee, 1796-1860," Tennessee Historical Quarterly, Part I, 44, 3 (Fall 1985): 322.

³⁸Legislative divorce petitions are on microfiche in the University of Tennessee Law Library included with other acts of the Tennessee General Assembly. Additional information for the legislated divorces is obtained from the book, Tennessee Divorces, 1797-1858, by Gale W. Bammon and Debbie W. Spero who abstracted facts from manuscript sources located in the Tennessee State Library and Archives.

Some of the cases included in this study are taken from Tennessee Divorces, 1797-1858 but are not among the divorces granted by the legislature; these may be petitions that were dismissed. There was one undated petition for Blount County in the book. This petition, that of Elizabeth Burton, is included in the research with a date of 1820 since it was found among the 1820 manuscripts.

The Hamilton District Superior Court records are the earliest court records in the study. Other divorces are found in the Knox County and Jefferson County Circuit Court minute books, and in the minutes of the Knox County Chancery Court. No divorces were found in the Jefferson County Chancery Court minutes between 1836 and 1843.³⁹ Blount County circuit records between 1810 and 1879 are unavailable be-

³⁹The Hamilton District Superior Court minutes are in volumes 1-6, 1793-180; there are also a few manuscript case files. Knox County Circuit Court minutes are in volumes 1-5, 1810-1843, microfilm reels I-5 through I-8. Knox County Chancery Court minutes are in volumes A and B, 1832-1850, microfilm reel H-101-M. Additional Knox Chancery Court information is in the rule dockets, 1832-1843, designated by docket number, microfilm reels 1-5. All the above records are in the Knox County Archives. Jefferson County Circuit Court minutes are in unnumbered volumes, 1810-1843 (records are missing from 1816 to 1826, and from 1828 to 1831), microfilm reels 7, 11, and 12. Jefferson County Chancery Court minutes are in unnumbered volumes, 1836-1843, microfilm reel 1. Jefferson County records are part of the McClung Historical Collection at the East Tennessee Historical Center.

cause they were destroyed by fire. There was no chancery court in Blount County until 1852.⁴⁰

For the years 1797 through 1843, there are records of sixty-five divorces filed in Knox, Jefferson, and Blount Counties or by petition to the legislature. Undoubtedly there would be more had the Blount County circuit records been salvaged. Close to half of the petitioners (twenty-seven) sought their divorces from the legislature.⁴¹ Of the sixty-five petitions, thirty-one are from women complainants seeking divorces from their husbands. Although women filed none of the petitions in the first years of the study, Table 1 shows that by the 1830s female petitioners filed more than half of the complaints.

In the counties studied, the earliest female divorce petition is that of Polly Hall Phillipson who, in 1807, asked the legislature for a divorce from her husband, John. Records indicate she received an absolute divorce but none of the case facts are known.⁴²

⁴⁰ Inez E. Burns, History of Blount County, Tennessee: From War Trail to Landing Strip, 1795-1955 (Nashville: Benson, 1957; rev. ed., Evansville, Ind.: Whippoorwill Publications, 1988), 207, 330. From 1836 to 1852, Blount County equity cases were heard in either the Monroe County Chancery Court in Madisonville or the Knox County Chancery Court in Knoxville.

⁴¹ Two of the remaining 38 petitions were filed in superior court, 3 in Knox County Chancery Court, and 31 (Knox-14, Jefferson-18) in the Knox and Jefferson Circuit Courts. Facts for the one Blount County Circuit divorce appear in a related case in the Knox Chancery records.

⁴² Bammon, 76.

Table 1

DIVORCE PETITIONS: KNOX, BLOUNT, AND JEFFERSON COUNTIES

DECADE	PETITIONS FILED	FEMALE COMPLAINANTS	FEMALE % OF PETITIONS FILED
1797-1799	2	0	0.0
1800-1809	4	1	25.0
1810-1819	9	4	44.4
1820-1829	16	8	50.0
1830-1839	29	16	55.2
1840-1843	5	2	40.0
Totals	65	31	48.0

There may have been an earlier petition filed in the Hamilton District Superior Court; the circuit court minute books of Jefferson County show that Louisa Lower's divorce case was transferred from superior court where it was originally filed in 1805. The Hamilton District records do not substantiate this fact, however. If true, it took Louisa five years to obtain her divorce, more than twice the average time of two years.⁴³

Most female complainants (fourteen) charged their husbands with desertion. Many cases are similar to Polly Eddington's of Knox County, who married Holston Eddington on May 26, 1829. Holston left his pregnant wife in March of 1830, two months before the birth of their daughter. In 1835, when Polly filed for her divorce, she thought Holston

⁴³ Jefferson Circuit Minute Book, July 1810 (no vol. no.), microfilm reel 7, 8, 27, 29-30.

then lived in Monroe County. In another case, Susannah and Thomas Oliver were married July 4, 1817, in Jefferson County. They traveled to Knoxville and on the second day he left, never to see or contact Susannah again. Several months after their marriage, Samuel Davis deserted his wife, Jane, leaving her destitute. Perhaps all three deserters discovered, belatedly, that they were not ready to assume the responsibilities of marriage.⁴⁴

Elizabeth and Stark McCabe were married in 1822 and four months later he left to take a herd of horses to Georgia. Elizabeth never heard from him again and did not know if he was still living; her father corroborated her statements. In 1829, Elizabeth's marriage was dissolved by the Knox County Circuit Court, and she was restored to *feme sole* status. In another case, Phillip Houser probably intended to send for his family when settled in his new home in the Michigan Territory, but sometimes circumstances changed and communication with loved ones was difficult from the new frontier of the midwest. Perhaps calamity befell him. Jane Houser received a letter from Phillip a year after he left, but heard nothing further. When Jane filed her divorce petition, her husband had been absent for seven years.⁴⁵

⁴⁴Knox Circuit Minute Book, vol. 3, microfilm reel I-6, 447, 454, case file 1318/805; Bammon, 73; Knox Circuit Minute Book, vol. 3, microfilm reel I-6, 225, 228-29.

⁴⁵Bammon, 62, Knox Circuit Minute Book, vol. 2, microfilm reel I-5, 504-5, vol. 3, microfilm reel I-6, 10 ; Knox Chancery Rule Docket, docket 208, microfilm reel 5, 318.

Three additional cases charging desertion were coupled with other grounds, cruelty or adultery, and two women accused their husbands of bigamy after their abandonment. Rosean (or Roseanna) Smith petitioned the legislature for a divorce from Ulysses Smith because he married someone else after leaving her. She had received a letter from Emily Oldham of Louisville, Kentucky, and a copy of the marriage license for Emily and Ulysses. Apparently, Ulysses had also left Emily and moved to Cincinnati where he tried to marry another woman. The legislature granted Rosean Smith a divorce upon proof and the marriage was later dissolved by the Knox County Circuit Court. Margaretta Smith of Blount County also sent her petition to the legislature. Margaretta and Joshua Smith were married ten or twelve years before Joshua left for McMinnville; Margaretta later heard that he had married again. This may be one of the petitions dismissed by the legislature, for there is no record of a divorce granted to Margaretta.⁴⁶

The divorce of Catherine Jane Chunn and Joseph Chunn is one of only two cases where the sole charge was the husband's adultery. There was quite a lot at stake in this divorce because Catherine owned real estate and twenty-two Negro slaves worth over twenty thousand dollars when she married Joseph. Differences arose between the couple when

⁴⁶Tennessee Session Laws: Private Acts (Jan. 12, 1830), microfiche 58, 261-62; Knox Circuit Minute Book, vol. 3, microfilm reel I-6, 61, 71, 90-91; Bammon, 91.

Joseph sold ten of the Negroes and all of the real estate formerly owned by his wife. The pair separated after nine years of marriage and Catherine and her children were "left mainly to the charity of their friends." Catherine filed for divorce in January 1835, but the case did not go to trial until May of 1838 because of Joseph's failure to answer the charges and Catherine's difficulty in getting witnesses to appear in court and testify. The jury's favorable decision for Catherine, and its dismissal of the adultery charges Joseph leveled against his wife, led the court to award Catherine an absolute divorce plus title to over 600 acres of land and eighteen slaves owned by Joseph. Chunn appealed the verdict to the Tennessee Supreme Court to no avail.⁴⁷

Elizabeth Mahoney's lawsuit charging her husband, William, with adultery took two years to resolve, partly due to the infrequency of court sessions and time needed for out-of-state depositions. Elizabeth was awarded the divorce and \$150. Four years after the initial filing of the divorce, the Jefferson County Circuit Court awarded a maintenance of \$37.50 to Elizabeth.⁴⁸

⁴⁷Jefferson Circuit Minute Book, (no vol. no.), microfilm reel 11, Jan. 1835-May 1838 (no page nos.); Goodheart, Hanks, and Johnson, Part I, 44, 3 (Fall 1985): 334.

⁴⁸Jefferson Circuit Minute Book, Aug. 1839, Apr.-Aug. 1841, Aug. 1843 (no vol. no), microfilm reel 11, 22, 97, and reel 12, 504.

Leanah (or Leanor) Cox was one of three women requesting a divorce from bed and board because of the cruelty of their husbands. Leanah received the requested decree and \$70 a year alimony from her husband "until the said Dudley shall be reconciled to his said wife or offer to cohabit with her again and treat her as a good husband ought to do" ⁴⁹ The 1811 decree is typical of those under the statute enacted in 1799 which viewed divorce from bed and board as a temporary status designed to protect wives from cruel husbands and support them until reconciliation could take place. Apparently, Dudley Cox was neither conciliatory nor satisfied with the situation for he charged Leanah with desertion the following year. When she failed to appear to answer the charge, Dudley was granted a divorce. Two years later Leanah and her new husband, Archibald Sloan, petitioned the court for a writ of error in Dudley's case against Leanah, possibly so Leanah would be entitled to dower in the then-deceased Dudley's estate. Their petition was transferred to the Court of Errors and Appeals and the disposition is unknown. ⁵⁰

Ellender Love had been the wife of William Love for twenty-eight years and had borne him ten children when she filed for a divorce from bed and board with support. An

⁴⁹ Jefferson Circuit Minute Book, Jan. 1811 (no vol. no.), microfilm reel 7, 71.

⁵⁰ Ibid., 4, 30, 71, 172, 174-75, 183, 187-88, 265, 267-68.

older son, Thomas, appeared in court with her as she charged William with cruelty. Though he had treated her badly for years, his behavior had worsened due to his drinking and he had recently threatened to kill her. Ellender also wanted an injunction to prevent William from selling their property and leaving the state with their youngest son. The injunction was apparently granted, for William was ordered to pay \$2,000 bond that he would not leave. The final outcome, however, is unknown since Ellender withdrew her suit.⁵¹

In 1832, Sarah Park requested a divorce from bed and board from the legislature because of her husband's cruelty and desertion. Alfred Park had a drinking problem and sold Sarah's property to buy whiskey, then became abusive. Alfred had been gone only a year when Sarah petitioned the General Assembly and, by waiting a year, she could have obtained an absolute divorce. However, Sarah was probably in need of a quick resolution to the problem as well as restoration to *feme sole* status in order to prevent Alfred's creditors from seizing any future money or property she might have. Sarah Park was the only woman from the three counties to petition the legislature for a bed and board divorce. However, many women from other counties in the state wanted legal separations. Between 1821 and 1833, when the last divorce petition was acted upon by the General

⁵¹Jefferson Circuit Minute Book, Jan. 1828 (no vol. no.), microfilm reel 11, 203-8.

Assembly, eighty-six additional women had been granted bed and board divorces by the legislature.⁵²

Four women in the study coupled their charge of cruelty with other grounds. Eliza Bunker charged her husband with cruelty in addition to adultery and misuse of her property. The details of this Blount County divorce are known because the case is included within the records of the Knox County Chancery Court. When Eliza Deaver married Jesse Bunker in 1828 or 1829, she was a rather well-to-do widow owning her own brick home, household furniture, livestock, farm tools, six Negro slaves, and a life estate in 90 acres of land. After their marriage, Jesse sold the slaves and some of Eliza's other property, rented the land and kept all the rental profits himself, and eventually turned Eliza out of her own home. In the chancery case, Eliza requested the rental money for her support and the money from the sale of the Negroes. One can only assume that since she was successful in chancery court, she was also granted the divorce in Blount County Circuit Court.⁵³

Nancy Formwalt was fifteen when she wed John Formwalt on January 9, 1817. In 1825, when Nancy petitioned the legislature for a divorce, she charged John with cruelty and nonsupport. The couple had only lived together for a

⁵²Bammon, 74; Tennessee Session Laws: Private Acts (Oct. 19, 1832), microfiche 65, 85-86.

⁵³Knox Chancery Rule Docket, docket 62, microfilm reel 2, 166.

few months before John's abusive and intemperate behavior drove Nancy to seek refuge at the home of her mother and stepfather. A reconciliation failed and Nancy again returned to her parents. The legislature granted her a divorce upon proof and several months later the case was filed in Knox Circuit Court, but there is no court record of a divorce granted to Nancy.⁵⁴

When Polly Elkins sued her husband, Peyton Elkins, for divorce and charged him with cruelty, she also took advantage of the new law which granted divorces to persons whose spouses had been convicted of crimes. In 1838, Peyton was sentenced to three years in prison for grand larceny, and Polly's marriage was dissolved two years later. With her husband in prison, it was probably a real necessity that Polly be restored to *feme sole* status in order to support herself. However, the divorce also rid her of an abusive husband.⁵⁵

Between 1797 and 1843, no male complainant ever received a divorce because of his wife's cruelty. However, male petitioners did charge their wives with desertion; of the thirty-four petitions submitted by men, seven advance this complaint. Husbands accused their wives of adultery

⁵⁴ Tennessee Session Laws: Private Acts (November 11, 1825), 261-62; Knox Circuit Minute Book vol. 2, microfilm reel I-5, 346.

⁵⁵ Knox Circuit Minute Book, vol. 4, microfilm reel I-7, case file 2292/1614.

more frequently than any other charge (nine); seven additional complainants charged both adultery and desertion. One petitioner received a divorce when his wife bore another man's child after six months of marriage. In ten cases, the grounds for divorce are unknown.

The case of John Cunningham versus Mary Ann Cunningham is similar to most of the male adultery petitions. John and Mary Ann were married around 1836, but she only lived with him for a few weeks before she "took up" with another man. Although none of the particulars are known in Nicholas Kerns' 1802 case, perhaps Elizabeth Kerns could not cope with the frontier or a separation from family and friends. Nicholas appeared in court and charged his wife with both adultery and desertion; Elizabeth did not appear as she had already returned to Virginia.⁵⁶

Most of the cases in which a wife deserted her husband contain few facts, instead stating briefly that the wife left or refused to live with her spouse. Jeremiah Reed's complaint of desertion against his wife, Mary, tells more. After ten months of marriage Mary Reed returned to her parents. A brief reconciliation resulted in Mary's pregnancy, but she then moved to Kentucky, bore a daughter, and

⁵⁶Knox Circuit Minute Book, vol. 4, microfilm reel I-7, 333, case file 1980; Hamilton Superior Court records, case file 804/677.

still refused to live with Jeremiah. It is unknown whether he received his divorce.⁵⁷

As shown by the divorce case histories, female petitioners used a greater number of complaints and more varied grounds in submitting their petitions than did men. Petitions charging desertion number fourteen for women, and five additional complainants pair the charge with adultery (one), cruelty (two), and bigamy (two). Cruelty as a ground for divorce was unavailable to men, but it also was not used by many women. Two women charged their husbands with cruelty, and two others accused them of adultery in addition to cruelty. One female petitioner joined cruelty to conviction of a crime to obtain the divorce; another coupled the charge with nonsupport. Adultery as the sole ground was likewise rare in female divorce petitions, with only two requesting divorces for this charge. The complaints of four women petitioners are unknown.

In comparison, men used three main complaints almost equally: adultery (nine), desertion (seven), and adultery/desertion (seven). There was also a male petitioner who accused his wife of bearing another man's child. For ten of the petitions submitted by males, the grounds for divorce are unknown.

Of the sixty-five divorce petitions filed by residents of the three counties, twenty-seven were petitions to the

⁵⁷Hamilton Superior Court records, case file 982/784.

legislature and the remainder were filed in superior, circuit, and chancery courts. Thirty-one of the total number of complainants were women. Although the first female divorce petition was not filed until 1807, women petitioners comprised more than half of the complainants by the 1830s. Thirty-six of the petitioners (eighteen female, eighteen male) were granted absolute divorces. Two women received legal separations (divorces from bed and board); men were not granted this type divorce as the law only allowed them for women who had been cruelly treated. Five petitions were dismissed by the complainants themselves. The disposition of twenty-two petitions is unknown.

The fact that over half of the divorce petitions (thirty-three) in the study use the ground of desertion (twenty-one) or desertion paired with another charge (twelve) is significant. It may point to the inability of some early Tennesseans to settle down or, as the frontier moved westward, to a yearning to move on to less-settled areas. The fact that only two women charged their husbands on the sole ground of adultery while nine men accused their wives of the complaint suggests that a double standard existed concerning morality for men and women. When the three women and seven men who coupled adultery with another charge are included, the totals (five women, sixteen men) are still significant. Apparently women also preferred absolute divorce over legal separation; only three women requested bed and board divor-

ces. One of those was immediately in need of *feme sole* status and two filed their petitions during the years when separation was the only solution allowed for cruelty. Other women coupled cruelty with another ground so they would be entitled to absolute divorce. The number of divorce petitions almost doubled in the 1820s and 1830s. Changes in the divorce law during the 1830s probably accounted for some of the increase. For women, it became easier and less expensive to obtain divorces; and, after 1836, they could petition for divorce in their own names. Also, statute changes required husbands found guilty of adultery to support their wives and children, and adulterous wives to forfeit dower rights. Husbands also retained the right to the proceeds of any property owned by wives found guilty of adultery. Another explanation for the increase in the number of divorce petitions may be that divorce was becoming more acceptable. The increase may also indicate that more Tennesseans wished to end unsatisfactory marriages legally rather than just going their separate ways.

As Tennessee lawmakers tried to protect women who were trapped in bad marriages, or who had been deserted by husbands, they also tried to incorporate some protections for women into property law. The private examination of wives whose husbands were selling property was one such protection.

Chapter III

PROPERTY RIGHTS OF MARRIED WOMEN

Conveyances

When a woman married, all real property she owned became her husband's to manage. He could use the rents and profits from the land in any way he chose; however, he could not sell the property without his wife's consent. English property law included a means for determining if the wife consented to the conveyance--the private examination.

The southern colonies, adapting English conveyancing measures to their own needs, continued the practice of examining the wife apart from her husband, thus assuring the court that the wife understood the terms of the sale and that she agreed to them. In the late seventeenth century, Virginia and Maryland enacted conveyance statutes which included separate examinations for wives; North Carolina passed a similar statute in 1715, and South Carolina followed suit in 1729. To ensure legal real estate titles to *feme covert* conveyances, the colonies strictly enforced the statutes.

Some of the northern colonies (Connecticut, Pennsylvania, and New York) were later in adopting laws which required private examinations for wives conveying property, and Massachusetts never required them. Connecticut enacted

such a statute in 1723, and Pennsylvania and New York did so in 1770 and 1771. In Massachusetts, the wife did not have to appear in court to acknowledge deeds of conveyance as her signature was acceptable if the husband publicly acknowledged the deed. Records indicate that even those northern colonies requiring private examinations were lax in enforcing the statutes.¹

Tennessee legislators, who adopted North Carolina's statute on *feme covert* conveyances in 1796, required the wife to be "privily examined" before a county judge or county court member before a real estate transfer could be certified as legal. The law provided for two commissioners to visit the homes of wives who were too ill or aged to appear in court. The original law, which required the wife's questioning to take place in the county where the land was located, was later amended to facilitate private examinations. After 1813, the deed of a woman questioned by a court officer of any court in the state or nation was acceptable. In 1833, the statute was further amended so that the clerks of county, circuit, chancery, or supreme courts were responsible for the private examinations of wives conveying land. These could be taken anytime, not solely when a court was in session.²

¹Marylynn Salmon, Women and the Law of Property, 14-40.

²Haywood and Cobbs, "Feme Covert," 119-21; Tennessee Session Laws (Nov. 1, 1813), microfiche 16, 102-3; Tennessee Session Laws: Public Acts (Nov. 29, 1833), microfiche 67,

Feme covert deeds of conveyance for the study are found in records of the Knox County and Jefferson County Circuit Courts through the year 1843.³ Included with the deeds are powers of attorney authorizing land sales which also necessitated private examination for wives. The deeds and powers of attorney number only seventeen records. Without research into the county court records, it is impossible to know how many *feme covert* deeds were acknowledged, or how many empowering acts there were, in the Court of Pleas and Quarter Sessions. No conveyances or powers of attorney were found in the chancery court minutes.

Although the statute giving jurisdiction for *feme covert* conveyances to any court in the state was not enacted until 1813, the earliest deed in the study was brought before the Jefferson County Circuit Court in 1812. The deed was presented by the attorney-in-fact of Mary and Benjamin Hickman; however, since Jefferson County recorded no powers of attorney, it can only be assumed that Mary was questioned

108-11.

³Knox County Circuit Court minutes are in volumes 1-5, 1810-1843, microfilm reels I-5 through I-8 in the Knox County Archives. Jefferson County Circuit Court minutes are in unnumbered volumes, 1810-1843 (records are missing from 1816-1826 and 1828-1831), microfilm reels 7, 11, 12, and are part of the Calvin M. McClung Historical Collection. Both the Archives and the Historical Collection are housed in the East Tennessee Historical Center in Knoxville.

apart from Benjamin before Francis Hickman was authorized to act in their behalf.⁴

With the exception of the Hickman deed which was accomplished through a power of attorney, each of the thirteen deeds from married women and their husbands strictly adhered to Tennessee's laws for *feme covert* conveyances which required a private examination of the wife. There are two deeds of conveyance from Dorcus and John Combs who sold land in Jefferson County to Henry Peck and Henry Holston. Both deeds note that Dorcus was questioned privately. Polly and Robert Childress, residents of Knox County, conveyed two hundred acres of land in Virginia. Polly, in order to convey a legal title to the land, would have needed to have a private examination even if Tennessee law had not demanded one because the land was located in a state which required them. The law where the land was situated superseded the law where the seller resided.⁵

Three of the documents are deeds of release in which each woman involved relinquished her interest in an estate to someone else. In Jefferson County, Martha Reed and Lucy Maze were probably sisters who each had an interest in the estate of Shadrach Inman. Both were questioned separately

⁴Jefferson Circuit Minute Book, Jan. 1812 (no vol. no.), microfilm reel 7, 139.

⁵Jefferson Circuit Minute Book, Jan. 1833 (no vol. no.), microfilm reel 11, (no page nos.); Knox Circuit Minute Book, vol. 2, microfilm reel I-5, 5.

to ascertain whether their husbands coerced them into giving up their inheritances. Knox County's deed of release is similar with Fanny Badgett and Mary Hinton relinquishing their rights to Jesse Williams's estate in North Carolina.⁶

The powers of attorney comprise almost half (four) of the total number of Knox County records and only one does not mention a separate examination. There are three possible explanations for the exception: (1) an oversight on the part of the clerk who failed to note the examination; (2) the land was located in a state not requiring separate examinations; (3) there was no private examination. It is most likely an oversight because no other particulars are included about the document other than the names of the participants. In February, 1821, Samuel Roberts was named the attorney-in-fact for James Gibbons, Betsey Keyhill, and Thomas Keyhill; other details are absent from the minutes. Two of the other three court records authorize an acting attorney to sell lands in Virginia. However, the document from Martha and Robert Murphy instead authorizes Hugh Murphy to transact business for them in Virginia. In all three instances there were probably conveyances, as each wife was questioned privately.⁷

⁶Jefferson Circuit Minute Book, Jan. 1833 (no vol. no.), microfilm reel 11, (no page nos.); Knox Circuit Minute Book, vol. 3, microfilm reel I-6, 391.

⁷Knox Circuit Minute Book, vol. 2, microfilm reel I-5, 99, 15; Knox Circuit Minute Book, vol. 3, microfilm reel I-6, 232.

Within the circuit court records there are ten deeds of conveyance and powers of attorney from single women. The legal differences between single and married women of the time are apparent when the court procedures are compared. Single women acknowledged deeds of conveyance in the same manner in which a man did, in open court and proven by two witnesses. There was no need for a private examination when there was no one to coerce the woman into selling her land.

There are few deeds of conveyance and powers of attorney upon which to base many conclusions about married women's property rights--seventeen documents are a very small sample. However, since fifteen of the records (twelve deeds, three powers of attorney) contain evidence of the wife's separate examination, Tennessee courts probably followed the letter of the law when dealing with *feme covert* conveyances. If the circuit court records for these two counties are any indication, the statute was strictly enforced. Additional research in the county court records would provide a better sample for studying the deeds. Further study would also be required to determine whether women in Jefferson County were privately questioned when authorizing powers of attorney to sell land.

Tennessee legislators appear to have been concerned with protecting women whose husbands were selling land, and Tennessee courts appear to have been vigilant in enforcing the statutes concerning conveyances. The marriage settle-

ment or contract was another protection that was employed in some states for women who owned real estate.

Marriage Settlements

An important development in English property law during the seventeenth and early eighteenth centuries was the marriage settlement or contract. Employed by many of England's propertied classes, marriage settlements were significant precedents allowing married women to own and manage their own real property, as well as convey and devise it. In England, chancery courts administered the settlements, so those American colonies in Marylynn Salmon's study (South Carolina, Virginia, Maryland, and New York) which adopted the English equity law system also set up chancery courts. Up until the Revolution, American chancery courts did not deviate much from the precedents set by English marriage settlements, although they did use local decisions to help clarify the law.

The colonies which did not create chancery courts modeled after the English system sometimes neglected equity law including marriage settlements. Connecticut declined to recognize the settlements, and Massachusetts also showed reluctance to grant women autonomy in the area of property rights. Pennsylvania allowed marriage settlements, but the absence of chancery courts in the state caused some deci-

sions which hindered women's rights in regards to property settlements.

Until the eighteenth century, few couples in America had marriage settlements. Marylynn Salmon attributes this to a lack of wealth in the colonies. By mid-century in South Carolina, after a class structure began to evolve similar to England's and a slave-based economy began to contribute great wealth to some, settlements were found more frequently. Widows, contemplating second marriages, wanted especially to protect the property they owned. Most of the settlements were created prior to marriage or remarriage, and may have even been a condition for matrimony.

Although the original impetus for establishing marriage settlements in England was to secure land and wealth for the support of widows and heirs, post-Revolutionary developments in America emphasized the protection of women's property from the creditors of their husbands. The economic instability of American business in the nineteenth century, a result of panics and depressions, served to refocus attention on the right of women to own property separately.

Creditors were against marriage settlements because they disliked the fact that they were denied access to the wife's property if her husband were insolvent. They claimed settlements contributed to indebtedness because a husband whose wife's property was secure could always live on her income. Some settlements were even created after marriage

by husbands who attempted to save portions of their wealth from loss. Creditors were very vocal in their disapproval, however, so states passed laws requiring registration of settlements in order that secret agreements could not be formed which might defraud lenders.⁸

Tennessee's statute of 1796 regarding marriage settlements was similar. Originally enacted by North Carolina in 1715 and reenacted in 1787, the act required that all marriage contracts or settlements be proven by two witnesses and registered in the same way in which deeds were. Any contract not proven within six months of its making and registered within one month thereafter would be void against creditors. The amount of the settlement could not exceed the total sum of the husband's estate when he married, or what the wife brought into the marriage, unless she received a legacy or share of an estate. The statute, amended by Tennessee legislators in 1831, provided that marriage contracts or agreements could be acknowledged at any time before the clerks of any county, circuit, chancery, or supreme courts. The agreements were to be registered where the husband resided and rerecorded in the new county of residence if a move occurred.⁹

⁸ Salmon, Women and the Law of Property, 81-83, 88-89, 93-95.

⁹ Edward Scott, Laws of the State of Tennessee Including Those of North Carolina Now in Force in this State From the Year 1715 to the Year 1820, Inclusive, 2 vols. (Knoxville: Heiskell & Brown, 1821), 337-38; Tennessee Session Laws:

No marriage settlements or contracts were found in the circuit and chancery records of Knox County or Jefferson County from 1810, when circuit courts were established, to 1843. The reason why none were found may be the same as Marylynn Salmon's explanation of the scarcity of marriage settlements until late in the colonial period--a lack of wealth. Although study of wills probated in Knox and Blount Counties revealed a few wealthy families, it is doubtful any of them were as affluent as the families in England and South Carolina whose great wealth prompted such settlements.

Salmon pointed out that bequests made in wills were more common than marriage settlements in some areas. There are a few examples found in East Tennessee wills in which a father bequeathed his daughter land with the stipulation that it was not to be sold for her husband's debts, or wills in which trusts were established so that the daughter might use the interest but not the principal of the money devised. Another will listed the property that a widow had brought into the marriage and which the husband agreed was hers to devise.¹⁰

Partial research in the Knox County Deed Books to determine where marriage settlements were registered disclosed two marriage contracts, one written in 1853 and another in 1874. The agreement made in 1853 was brought

Public Acts (Dec. 20, 1831), microfiche 60, 108-10.

¹⁰ Salmon, "The Property Rights of Women," 6.

before the Knox County Clerk. A complete search of the Knox County deeds, as well as research into the County Court records, would be needed before one could say conclusively that no marriage settlements were made in these counties during the early statehood period. However, it seems likely that if any were found the number would be small. An examination of deeds of two of the area's wealthiest families, the Ramseys and the Whites, revealed no recorded marriage settlements.

No marriage settlements or contracts were found in Knox and Jefferson Counties because East Tennessee did not have the wealth associated with a slave-based economy such as South Carolina's. Although all the records have not been examined, it appears that residents in the two counties preferred to stipulate through wills rather than draw up formal agreements when settling property on their daughters. Further study is needed before the question of marriage settlements is solved.

Conveyancing statutes and marriage settlements were protections for women who owned real property. However, the most important property right that married women possessed was dower.

Dower

Dower was the portion of her husband's estate to which a widow was legally entitled. Its existence can be traced

back to twelfth-century England, where a husband was required by law to leave his wife one-third of the real property he owned when he married. Most of the colonies designated dower as one-third of land owned by the husband at any time during the marriage, an extension of dower which originated with the Magna Carta in the thirteenth century. Four colonies (Connecticut, Pennsylvania, North Carolina, and Georgia) provided that the one-third portion come only from lands owned at the time of the husband's death. Elizabeth Warbasse has concluded that the probable reason for the deviation was the colonists' attempt to provide for conveying lands more easily.¹¹

When the American colonies were settled, English common law granted widows one-third of the husband's personalty as well as the real property.¹² During the seventeenth century, dower practices changed so that England and most of the colonies no longer endowed widows with personal property. Maryland and Virginia still allowed widows dower in personal property, and colonial North Carolina also con-

¹¹Elizabeth Bowles Warbasse, The Changing Legal Rights of Married Women, 1800-1861, (New York: Garland Publishing, Inc., 1987), previously unpublished Ph.D. dissertation, Radcliffe College, 1960, 10-11, 11 (n.1); Salmon, Women and the Law of Property, 141, 160.

¹²Personalty was the personal property of a person: clothing, jewelry, money, farm tools, and household furniture and goods. In most states, slaves were also categorized as personalty, although they were classified as realty by Virginia lawmakers, who reasoned that the land would be useless without slaves to work it. Salmon, Women and the Law of Property, 4-5.

tinued the practice through a 1784 statute which provided one-third of both personalty and real estate for widows.¹³ Tapping Reeve, a Connecticut jurist who began the first law school in America, described the type of personalty which was not liable for the husband's debts as "paraphernalia." This consisted of the wife's clothing and her bed. Her jewelry was also paraphernalia, but it could be seized by creditors to pay debts if all the personal estate had been sold and there were still outstanding bills.¹⁴

The widow's dower in real property was not fee simple ownership of the land, but a life estate--that is, she was entitled to use the rents and profits from the land but not allowed to sell it. There were no restrictions on fee simple inheritance of land; the legatee could do what he or she chose with the property. While the widow was a lifetime tenant, there were usually regulations concerning upkeep of the land which prevented her from "wasting" the land by cutting its trees or mining it. Dower in real estate was exempt from the husband's debts in most of the colonies, but Pennsylvania did not allow any dower to wives of insolvent debtors. Those widows generally had to rely on the generosity of their kin. In South Carolina, the lands of debtors

¹³Salmon, Women and the Law of Property, 147-151; Haywood and Cobbs, "Dower," 77.

¹⁴Tapping Reeve, The Law of Baron and Femme, of Parent and Child, Guardian and Ward, Master and Servant, and of the Powers of Courts of Chancery, 2nd ed. (Burlington, Vermont: Chauncey Goodrich, 1846), 37-38.

were sold and the widows' share, a cash payment, was apportioned after all debts were satisfied. After the Revolution, the appearance of relief organizations for widows in many states attested to the fact that some women were unable to support themselves on their dower shares and needed public assistance.¹⁵

When Tennessee was admitted to the Union in 1796, the state adopted the 1784 North Carolina statute concerning dower. Widows were allowed a life estate in one-third of the land which their husbands owned at death; any conveyances made by a husband in an attempt to defraud his wife of her dower were to be treated as if they had not been made. The husband's dwelling, outbuildings, and other improvements were included in the dower portion as well as one-third of his personalty. If there were more than two children, the wife would receive a child's share of personal property. The widow's petition for dower was to be filed in the court of pleas and quarter sessions, which would then appoint a jury of twelve freeholders to "allot and set off" the dower. Dower petitions were originally filed in county courts, but when circuit courts were established in 1810 widows' requests could also be filed in them.¹⁶

¹⁵ Salmon, Women and the Law of Property, 143, 163, 169, 184.

¹⁶ Haywood and Cobbs, "Dower," 77.

An 1813 statute allowed widows of intestates one year's support in crops and provisions from the estate. Any livestock, farm tools, or slaves necessary to raise the crops and sell them could be used. The year's provisions were exempt from seizure by creditors; however, the remainder of the crop was not exempt if a creditor had obtained a judgment against the husband while he was living. An 1837 amendment to the law repealed its third section dealing with creditors, apparently denying them the right to collect any of the widow's crop.¹⁷

In 1823, legislators expanded the rights of widows by allowing them dower out of their husband's equitable estates in land as well as their legal estates. This then meant that the widowed daughter-in-law of a man who had intended to give his son title to land before his own death would still be entitled to dower in the land.¹⁸

A jury of twelve men to apportion the dower must have proved cumbersome; the legislature reduced the number to five freeholders in 1827. At the same General Assembly, the share of personalty for childless widows was increased to one-half. Two months after the establishment of chancery

¹⁷Tennessee Session Laws (Nov. 16, 1813), microfiche 17, 159-61; Tennessee Session Law: Public Acts (Dec. 28, 1837), microfiche 77, 37-38.

¹⁸Tennessee Session Laws: Public Acts (Nov. 22, 1823), microfiche 35, 46-47.

courts in December, 1835, the jurisdiction for dower was extended to them.¹⁹

The widows' dower petitions included in the study are from the circuit and chancery courts of Knox and Jefferson counties. Because there is only one dower petition prior to 1836, most widows in the early years must have petitioned county court to have their dower apportioned; county court records were not researched for this thesis. In the two counties there are thirty-six petitions from 1836-1843. Knox Countians preferred to file the majority of their petitions (sixteen) in chancery court, while Jefferson County widows filed more petitions (ten) in circuit court.²⁰

Elizabeth Evans was displeased with the dower laid off by county court in 1816 so she appealed to the Knox County Circuit Court. Details of the case are scant, but she was apparently satisfied with the dower set aside by the circuit court jury for there is no further mention of her in the minutes. The earliest dower petition filed in Jefferson

¹⁹ Tennessee Session Laws: Public Acts (Oct. 2, 1827 and Oct. 26, 1827), microfiche 49, 7, 12; Tennessee Session Laws: Public Acts (February 20, 1836), microfiche 71, 90.

²⁰ Knox County Circuit Court minutes are in volumes 1-5, 1810-1843, microfilm reels I-5 through I-8. Knox County Chancery Court minutes are in volumes A-B, 1832-1850, microfilm reel H-101-M. All the above records are in the Knox County Archives. Jefferson County Circuit Court minutes are in unnumbered volumes, 1810-1843 (records are missing from 1816 to 1826, and from 1828 to 1831), microfilm reels 7, 11, 12. Jefferson County Chancery Court minutes are in unnumbered volumes, 1836-1843, microfilm reel 1. Jefferson County records are part of the McClung Historical Collection at the East Tennessee Historical Center.

County's Circuit Court is complicated due both to the nature of the case and to two related cases, one in chancery court, filed a year after it. The details of the case are reconstructed as accurately as can be determined. It appears that Catherine Smith was the widow of William Jarnigan but had remarried. In the original document filed in April, 1836, Catherine and Jacob Smith petitioned the court to "allot and set apart" dower from land in which she was a tenant in common with four others, including Martha Jarnigan. Martha, who applied for dower in 1837, was the widow of Chesley Jarnigan, either a son or brother of William, Catherine's former husband. In a related case William's administrator requested the land be sold to pay off debts. Normally dower apportionment took only a few months, but this case was not settled for over three years. Both Catherine and Martha received dower from the land and the remainder was sold.²¹

Most of the petitions are similar to that of Susan Bright who asked the Knox Circuit Court in October of 1836 to lay off her dower from the estate of John Bright. The

²¹Knox Circuit Minute Book, vol. 1, microfilm reel I-5, 277, 283; Jefferson Circuit Minute Book, Apr. 1836-Aug. 1839 (no vol.no.), microfilm reel 11, (no page nos.); Jefferson Chancery Minute Book, Apr.-Oct. 1837 (no vol. no.), microfilm reel 1, 26-27, 40-42. Jefferson County records, both circuit and chancery, contain much more information about petitions than the Knox County data. Although not included for this particular case, the minutes for some of the dower petitions contain miniature maps of the land along with detailed descriptions, acreage amounts, and property values.

commissioners reported a month later that five hundred acres were allotted to the widow and that when the personalty was sold she would receive money equal to her share of it. Rachel Birchfield and Mary Landrum of Jefferson County petitioned the circuit court for dower, one widow in April and the other in August of 1840. By the December term of court when the commissioners reported, the lands for each had been set aside.²²

The case of Sarah Montgomery in Knox Chancery Court is evidence that some widows were left in financial trouble by the death of their husbands. Case records listed Sarah as a pauper who was unable to afford legal counsel. Her husband, James Montgomery, left a will with Sarah as executrix but without sufficient funds or provisions for her support. She requested dower in 250 acres that her stepdaughter, Elener Montgomery Steel, claimed. None of the particulars are known, but the court ruled she was not entitled to dower in the land and dismissed the case. In another case it was necessary to sell both land and slaves to satisfy David Bell's debts, but the chancellor made sure that Bell's widow retained her dower lands in spite of the fact that the other heirs lost their inheritances.²³

²² Knox Circuit Minute Book, vol. 3, microfilm reel I-6, 563, 591-92; Jefferson Circuit Minute Book, Apr.-Dec. 1840 (no vol. no), microfilm reel 11, (no page nos.).

²³ Knox Chancery Minute Book, vol. A, microfilm reel H-101-M, 221, 255, 280, 334; Knox Chancery Rule Docket, docket 209, microfilm reel 5, 192, 247, 291, 304, 332.

William Faubion owned three thousand acres and left a nuncupative (oral) will leaving each of ten heirs acreage equal to \$1,331. Roseannah, his widow, requested dower and three hundred acres were apportioned for her.²⁴ It is unclear why she received a fraction of the land when she was legally entitled to one-third of it. Unknown facts prevent an accurate assessment of the case--perhaps Roseannah felt she was unable to manage more than three hundred acres, or since some of the sons appear to be minors, perhaps she knew she would also manage their properties. Although published in 1858, The Code of Tennessee may offer another explanation. According to it, commissioners who apportioned dower did not have to assign the widow one-third of each tract of land owned, "but [could] make the assignment, according to quality and quantity, in such manner as [would] give her one-third in value of the whole estate."²⁵ Since no value was recorded for the acreage partitioned for Roseannah, her tract may have been worth more than the other tracts.

Tennessee, following the example of North Carolina, allowed widows one-third of both realty and personalty. The dower in real property was subtracted from lands owned by the husband at the time of his death. Thirty-seven dower petitions were filed in the circuit and chancery courts of

²⁴ Jefferson Chancery Minute Book, Dec. 1839 - Jun. 1840 (no vol. no.), microfilm reel 1, 116, 135-36.

²⁵ Return J. Meigs and William F. Cooper, eds., The Code of Tennessee Enacted by the General Assembly of 1857-'8 (Nashville: E. G. Eastman & Co., 1858).

Knox and Jefferson Counties. Date of filing began in 1836 with one exception, an 1816 appeal from Knox County Court. Although widows after 1810 were permitted to file their dower petitions in either circuit or county courts, Knox and Jefferson County relicts must have preferred to file them in county court. The fact that the majority of petitions were settled quickly and without controversy is evidence of the regard in which the widow's share was held by both community and court. No one doubted a widow's right to dower. Occasionally, unusual circumstances made the cases more difficult to solve as in the dower petitions of Catherine Smith and Martha Jarnigan--but these were exceptions. In one of the cases, it appears that the widow received less than she was legally entitled to receive. One can only assume that she was satisfied with the case's disposition, for most certainly, had she objected the court would have supported her.

During this period, dower was the most important property right to which a married woman was entitled. In the counties studied there is evidence that some women enjoyed an elevated status within their households, for their husbands' wills left them more than the one-third dower share.

Chapter IV

INHERITANCE

Whereas wills and testaments which ought to be the most solemn and best considered act of a man's life, are, in too many instances, the most indiscreet from weakness of body and mind, and the undue influence of those about them, and from an omission of due ceremonies, the true intentions of the testator are frustrated, and injustice done to those for whom he meant specially to provide . . .

¹

The preceding statute concerning wills was enacted by the North Carolina General Assembly in 1784, and later adopted by Tennessee's legislature immediately after statehood in 1796. The act stated that a will must be written and signed by the testator, as well as subscribed by two witnesses, in order for it to be a legal document which conveyed land, dwellings, and other property to one's heirs. The act did allow another person to transcribe the will if it was done in the testator's presence. Unwitnessed testaments found among the papers of a deceased person were also legal if three "creditable" witnesses attested in court to the authenticity of the handwriting and the validity of the will. The statute provided for sudden illnesses, such as that of a traveler overcome by sickness on a journey, by allowing nuncupative (oral) wills. However, there were

¹Haywood and Cobbs, "Wills," 373-74.

certain conditions which must be met for these wills to be valid: (1) the estate could not exceed \$250 unless the will was witnessed by two persons present at its making; (2) unless written down within ten days, the will must be proved in court within six months after being made; (3) the will could not be proven until the widow and/or next of kin was called to contest if they so desired. All wills were to be probated in the Court of Pleas and Quarter Sessions (County Court).

Historian Lois Green Carr has argued that "decisions for transferring property from one generation to the next are fundamental to the economic and social organization of any society."² This thesis, therefore, studies wills written during Tennessee's territorial and early statehood period in order to make some inferences concerning women's legal status during that period. The analysis includes the number of female wills written, executrices and female witnesses, women receiving devises of land, and widows receiving more than dower.

The wills examined in this thesis were originally filed for probate in two East Tennessee counties, Knox and Blount, in their respective court houses located in Knoxville and Maryville. Wills included in the study were all written or

²Lois Green Carr, "Inheritance in the Colonial Chesapeake" in Women in the Age of the American Revolution, ed. Ronald Hoffman and Peter J. Albert (Charlottesville: United States Capitol Historical Society by The University Press of Virginia, 1989), 155.

probated by December, 1843, when members of the Tennessee legislature first introduced married women's property laws.³

Four of the wills from Knox County predate its founding in 1792. The will of Job Price was written in 1787 in Georgia, although Job appears to have been a Knox County resident in 1806 when the will was probated. The will of Nancy Kennedy (1836), also written in Georgia, is included with the study because it was filed in Knox County. It is unclear whether Nancy lived in Knox County at the time of her death, although some of her married children probably did, and part of the land devised in her will was on the Hiwassee River in McMinn County. She is included also because women's testaments comprise such a small part (7.75 percent) of the wills that any insight into the reasons those few women left wills is welcome.⁴

The earliest Blount County wills are dated 1795, although an earlier will has been excluded. John Paxton's will, written and probated in 1787 in Rockbridge County, Virginia, was evidently filed in Blount County in 1808 because of its bequest to three grandsons, residents of the

³Knox County wills, 1787-1843, are in Estate Books, vols. 0-8, microfilm reels 1-3 in the Knox County Archives. Blount County wills were transcribed in 1869 from all records not destroyed by a courthouse fire into Wills, vol. 1. A microfilm copy, reel 139, is part of the Calvin M. McClung Historical Collection. Both the Archives and the Historical Collection are housed in the East Tennessee Historical Center in Knoxville.

⁴Knox County Estate Books, vol. 1, microfilm reel 1, 194-95; vol. 6, microfilm reel 3, 127-28.

county for less than a year. James, John, and Robert Houston each received half-acre lots adjoining the town of Lexington, Virginia. This association is not close enough to include Paxton with the other Blount County wills.⁵

In Knox County, the 349 wills (322 male and 27 female) that are part of the study are copied, along with estate inventories and sales and records of administration, in the estate books in chronological order beginning with the July session, 1792. Each will has a probate date; however, for purposes of this study, the significant date is the date of its writing. The eight undated documents are included by their probate date. In the great majority of cases with two known dates, only a few months separated the two. Knox County archivists believe that the collection is complete because no disaster ever occurred at the courthouse in Knoxville; major fires and floods account for lost records in many of the early courthouses.

Blount County's courthouse suffered such a loss, although the number of records which were destroyed is unknown. This researcher is inclined to believe that the number is small because 219 wills (202 male and 17 female) were written during the period studied. The wills were copied in volume one, in mostly alphabetical order, with no estate settlements or inventories incorporated. Probate

⁵Blount County Wills, vol. 1, microfilm reel 139, 118-19.

dates are not given, so no will is included unless the date of its writing is consistent with the dates of the study. Consequently, no undated wills are included in the Blount County research.

Table 2 shows the number of wills written in each county, the number of female wills made, and female wills as a percentage of all wills probated for each decade beginning with 1787 (date of the earliest will) and continuing through 1843.

It is significant that wills were written by women in the earliest decades of each county. In Knox County, Philadelphia Grills wrote her will in August of 1789, adding a codicil to the will two months later. Philadelphia was a

Table 2

WILLS

DECADE	KNOX COUNTY			BLOUNT COUNTY		
	WILLS	FEMALE	FEMALE %	WILLS	FEMALE	FEMALE %
1787-1789	4	1	25.0	0	0	0.0
1790-1799	27	0	0.0	6	1	16.7
1800-1809	50	2	4.0	21	0	0.0
1810-1819	69	6	8.7	39	4	10.3
1820-1829	77	5	6.5	56	1	1.8
1830-1839	87	10	11.5	68	2	2.9
1840-1843	35	3	8.6	29	9	31.0
Totals	349	27	7.74	219	17	7.76

well-to-do woman who owned six adult Negro slaves and five slave children. She directed that these slaves should be sold and the proceeds divided equally among her two sons and three married daughters. According to court records, Philadelphia's will was not probated until her husband, John Grills, wrote a letter acknowledging that the slaves were hers to devise and enclosed a bill of sale proving the fact. Blount County's earliest female will is that of Sarah McCartee whose husband's will is one of the Knox County records, probably due to changing county lines in 1795.⁶

Table 3 combines the Knox County/Blount County statistics. Further analysis uses these combined totals because the larger number provides a more accurate data base, and enables the historian to study continuity and change over time in the region.

Historians writing about other sections of the country during the colonial period have stated that most property owners died intestate, with only one-fifth to one-half of them leaving wills.⁷ No mortality schedules are available

⁶Knox County Estate Book, vol. 0, microfilm reel 1, 115-17; Blount County Wills, vol. 1, microfilm reel 139, 210-11.

⁷Gloria Main, "Probate Records as a Source for Early American History," WMQ, 3rd ser. XXXII (1975), 91; David E. Narrett, "Men's Wills and Women's Property Rights in Colonial New York," and Lois Green Carr, "Inheritance in the Colonial Chesapeake" in Women in the Age of the American Revolution, ed. Ronald Hoffman and Peter J. Albert (Charlottesville: United States Capitol Historical Society by The University Press of Virginia, 1989), 97, 156.

Table 3

TOTAL WILLS: KNOX AND BLOUNT COUNTIES

DECADE	WILLS	FEMALE	% FEMALE
1787-1789	4	1	25.0
1790-1799	33	1	3.0
1800-1809	71	2	2.8
1810-1819	108	10	9.3
1820-1829	134	6	4.5
1830-1839	154	12	7.8
1840-1843	64	12	18.8
Totals	568	44	7.75

for the early period of Tennessee, so there can be no comparison of the number of decedents and those dying testate to determine the percentage who left wills. However, in Tennessee, the dates of the wills and their probate dates were usually quite close. It appears that Tennesseans of the late eighteenth century and early nineteenth century did not put in writing how they intended to devise their property until death was imminent. This fact can also partially account for the low number of wills. A person may have intended to write a will, but might have died before actually writing it. The small number of nuncupative wills (seven) suggests that many were not aware of the legality of oral wills.

The figures in Table 4 show wills in which women were named to execute an estate. Occasionally a will did not name an executor; if the widow or daughter was designated by

Table 4

EXECUTRICES/FEMALE WITNESSES: KNOX AND BLOUNT COUNTIES

DECADE	N WILLS	EXECUTRICES	%	WITNESSES	%
1787-1789	4	1	25.0	1	25.0
1790-1799	33	17	51.5	3	9.1
1800-1809	71	29	40.8	13	18.3
1810-1819	108	33	30.5	6	5.6
1820-1829	134	36	26.9	7	5.2
1830-1839	154	34	22.1	5	3.2
1840-1843	64	9	14.1	0	0.0
Totals	568	159	28.0	35	6.2

the Probate Court, these wills are counted as if an executrix had been named in the document. When analyzing the numbers for each decade, one notices that testators in the early years were more likely to name a woman to administer their estates than in the later years. Since most testators were men, does this mean that as time passed men felt their wives were less competent to handle their estates?

Gloria Main addressed this question in her study of wills in rural Massachusetts during the late colonial period. Main found that wives were less likely to be named as executrices in the eighteenth century as compared with the seventeenth century. However, Main was able to determine the ages of the testators and concluded that as the population aged, men who were older were more hesitant to name

wives who were also older to administer their estates. Age, then, rather than gender was the important variable.⁸

Ages of the Knox County and Blount County testators are not available for this study. One might speculate that testators in the earlier years were younger because the area was in the process of being settled. A close examination of the ten years in which over half the wills written named a woman to administer the estate provides some clues. Without knowledge of the testator's ages, one can only conjecture that Mathias Sharp, who has a married daughter, Elizabeth Hinds, is over forty-five. The ages of Lamos McCartee and Sarah McCartee, his wife and executrix who wrote her own testament three years later, are easier to guess when one studies both wills. Granddaughter Mary McCartee was named as executrix of Sarah's estate, so the elder McCartees were probably in their sixties when they wrote wills. Likewise, Robert Chapman, who gave his wife absolute control over his estate in order to raise his children, was probably a younger man. Using the above criteria, five wills name married children (parents possibly over forty-five), eight wills list minor children (parents probably younger), and four

⁸Gloria L. Main, "Widows in Rural Massachusetts on the Eve of the Revolution" in Women in the Age of the American Revolution, ed. Ronald Hoffman and Peter J. Albert (Charlottesville: United States Capitol Historical Society by the University Press of Virginia, 1989), 70-77.

wills have sons old enough to farm or be named as executors (parents may/may not be over forty-five).⁹

Comparing the above decade with the last four years of the study seems to confirm Main's findings. Two testators, Ann Blackwell and Simon Sheerod, left their daughters in sole control of their estates, and a third, Thomas Hunter, named his daughter as a co-executor. Peter Monger did not name anyone to execute his estate, so his daughter was appointed by the court after his wife declined to serve. In the two wills which mentioned minor children, John Martin also had sons old enough to be named as executors and help their mother decide whether the land should be sold. Two additional wills mentioned several married daughters. In the final will, it is impossible to estimate the age of the single daughter who inherited half the livestock. Of the nine wills surveyed, six wills (seven if John Martin is counted) were probably made by older testators. One will was made by a young man, and one testator's age was impossible to estimate. Since these statistics show older testators, it seems reasonable to assume that the demographics of the two counties, which by the 1840s were no longer in the frontier stage, had changed.¹⁰

⁹Knox County Estate Book, vol. 0, microfilm reel 1, 3-4, 12-13; Blount County Wills, vol. 1, microfilm reel 139, 210-11.

¹⁰Knox County Estate Book, vol. 7, microfilm reel 3, 350A-51; Knox County Estate Book, vol. 7, microfilm reel 3, 210-11; Knox County Estate Book, vol. 8, microfilm reel 3,

When looking at the number of female witnesses (thirty-five) who signed wills (see Table 4), it is obvious that very few women witnessed wills. Apparently, men preferred to use male witnesses if they were available. Even women did not use their counterparts; only two women's wills bear female signatures. The decade (1800-1809) with the most female witnesses offers few reasons why more women signed wills during those years. The nuncupative will of William Henson was attested to by Allin Henson and Easter Henson (probably a son and daughter or daughter-in-law) who testified that the will was "delivered to us on his death bed."¹¹ William needed two witnesses for his will to be legal so perhaps there were no other males present. Hannah Sawyers' will was witnessed by Nancy Sawyers who was presumably a relative. Rebekah Hackney witnessed her husband's will, unless the signature belonged to a female relative with the same name. Two of the wills seem to be signed by husbands and wives. The will of Patrick Vance has two signatures, Magdalene Parker and G. W. Parker, and James McCarrel's will was witnessed by Polly Nance and Peter Nance. Could the couples have been neighbors visiting sick friends,

170-71; Blount County Wills, vol. 1, microfilm reel 139, 56-57, 185-86.

¹¹Knox County Estate Book, vol. 0, microfilm reel 1, 30.

and while there asked to sign testaments? Perhaps they were even called to witness the wills.¹²

Since most of the Knox County wills were probated soon after their writing, it is likely that many of the wills were written just prior to the testator's demise. This would substantiate the premise that women acted as witnesses only in cases of emergency when too few male witnesses were available. The decade of 1800-1809 with thirteen wills having female witnesses might be just an aberration.

It is helpful to look at statutes dealing with intestate estates when analyzing inheritance. In 1784, while the Revolutionary spirit was still fresh, North Carolina law abolished primogeniture with these words:

Whereas it will tend to promote that equality of property which is of the spirit and principle of a genuine republic, that the real estates of persons dying intestate should undergo a more general and equal distribution than has hitherto prevailed in this state.¹³

The law also stated that any real estate of an intestate person should go to all sons equally, and if there were no sons, then the land should descend equally to the daughters. In 1796, the same statute was adopted by the Tennessee legislature. As interpreted by John Haywood and Robert L. Cobbs in The Statute Laws of the State of Ten-

¹²Knox County Estate Book, vol. 1, microfilm reel 1, 282-83; Blount County Wills, vol. 1, microfilm reel 139, 66-67; Knox County Estate Book, vol. 1, microfilm reel 1, 122-23; Knox County Estate Book, vol. 2, microfilm reel 1, 61-62.

¹³Scott, 292.

nessee, the 1796 act did not expressly include daughters unless there were no sons, "but they have been so by legal decisions and general understanding."¹⁴

Interestingly, if there were no male heirs, testate estates adhered closely to the pattern set forth for intestates in the statute. Fewer than ten testators appear to have had no sons and thus left bequests solely to daughters. Six persons devised land to their daughters. Watson Reed left his land to be split among his wife and two daughters, Elizabeth and Hete. Elizabeth received 600 acres, but the amounts that Hete and her mother were to receive were not listed in the will. John Maxwell also divided his estate among his wife and daughters, with one-third of the perishable property left to his wife, Elisabeth, and two-thirds left to Rebecca and Margary. Elisabeth also was left a life estate in the plantation while she was single, but if she married, the land would be equally divided between the two daughters. Spencer Gilliam's estate was to be liquidated after his wife's death or remarriage and the money equally divided among his four daughters, Anne, Winney, Polly, and Elizabeth. Two of the six receiving gifts of land seem to have had no siblings, Peter Griffin's daughter Elizabeth, and Sally Martin, daughter of Mary Kerr. Elizabeth received an unnamed amount of property in Knoxville plus one hundred acres in North Carolina, and Sally's bequest was 375

¹⁴Haywood and Cobbs, "Descents," 71.

acres in Blount County. Thomas Wear's married daughters, Jane Carson and Polly Inman, each received a tract of land (acreage unknown), but another daughter who was probably single had to share her real estate with her mother.¹⁵

During this time period in Tennessee, many fathers apparently preferred to give children their inheritance when they married. Consequently, many wills list older children who had already received their portions of the estate. John Erving's will lists four children, Jane, Elizabeth, Henry, and John, who had been provided for; John Crozier names his daughter, Margaret B. Ramsey, and his son, Hugh. Three of John Meek's sons and four of his daughters had received land when they married. James Badgett, Sr. left one dollar to each of his eight children who had previously received their inheritances. Often the bequests in the wills are for younger children still living at home with their parents.

Table 5 shows the number of wills naming women other than the wife who received land (the six wills without male heirs are included in these totals). Wills are counted if only one daughter inherited land; wills are also included when the legatees were sisters, sisters-in-law, nieces, or granddaughters, although ninety percent of the legatees were

¹⁵Knox County Estate Book, vol. 0, microfilm reel 1, 16; Blount County Wills, vol. 1, microfilm reel 139, 94; Knox County Estate Book, vol. 1, microfilm reel 1, 324; Knox County Estate Book, vol. 6, microfilm reel 3, 301-2; Blount County Wills, vol. 1, microfilm reel 139, 87; Blount County Wills, vol. 1, microfilm reel 139, 158.

Table 5

INHERITANCE OF WOMEN OTHER THAN WIVES:
KNOX AND BLOUNT COUNTIES

DECADE	N WILLS	LAND/SLAVES	%	SLAVES	%
1787-1789	4	1	25.0	1	25.0
1790-1799	33	8	24.2	2	6.1
1800-1809	71	18	25.4	7	10.0
1810-1819	108	26	24.1	6	6.0
1820-1829	134	44	33.0	8	6.0
1830-1839	154	54	35.1	16	10.4
1840-1843	64	14	22.0	4	6.3
Totals	568	165	29.0	44	7.7

daughters. The number of wills for each decade is the total number of wills written; therefore, some are wills in which the testators were unmarried (fifteen), some are wills of married testators with no children (twenty-four), and some are wills of testators who appear only to have had sons (twenty-nine). Wills written by women are also included in the total number, with seven women devising land and eight women willing slaves to females. Forty-three of the total number of wills either left real estate to children equally but the gender of the children was not stated in the will, or the estate was left to a female but the will did not state specifically that real property was part of the devise.

In the first twenty years of the nineteenth century, about one quarter of the wills bequeathed land to women

other than wives (Table 5). The decade from 1820-1829 shows an increase in bequests to women for which there are two possible reasons. The first pertains to the economic turmoil Tennessee suffered during those years.

The state experienced rapid population growth between 1800 and 1820. The end of the War of 1812 brought much land speculation and increases in trade and commerce. Many new banks were chartered to capitalize on the business expansion, and most resorted to unsound "wild cat" banking practices. Paper money issued by the banks was redeemable in specie, but many banks did not keep enough gold and silver on hand and eventually were forced to suspend the payments. This devaluated their previously issued paper money. The resulting deflation, bankrupt businesses, and mortgage foreclosures led to the Panic of 1819.¹⁶

The connection between the depression and an increase in land bequests to women other than wives concerns the way in which a *feme covert* held title to her real property. Real property, unlike personalty, did not become the husband's when a woman married. Although the lands could be managed by him and he could use their profits, he could not

¹⁶ Stanley J. Folmsbee, Robert E. Corlew, and Enoch L. Mitchell, Tennessee: A Short History (Knoxville: The University Tennessee Press, 1969), 140-41; Thomas Perkins Abernethy, From Frontier to Plantation in Tennessee: A Study in Frontier Democracy (Memphis: Memphis State College Press, 1955), 221-26.

alienate the lands without special consent from his wife.¹⁷ A father who left his daughter or other female relative land endowed her with a measure of economic security since her inheritance was not subject to her husband's creditors.

A second possible reason for the increase in land willed to female relatives other than wives of the deceased may have simply reflected the desire on the part of parents to treat their children fairly and equally. Women were not equal in a strictly legal or political sense. By the third decade of the nineteenth century, most states (including Tennessee) had eliminated property qualifications for voting which had brought about almost universal white male suffrage. Female franchisement did not occur for another hundred years. Legally, married women were restrained by unequal property requirements and restrictions on initiating lawsuits and conducting business.

The early years of the nineteenth century in America were a period of much change as the nation moved more towards a market economy. Increasingly, the home began to be thought of as the woman's sphere and the workplace as the man's. By viewing the home as an equal sphere, albeit a separate one, women were able to gain satisfaction that their contribution to the family was valuable. Ministers

¹⁷Warbasse, 9.

especially advanced the idea that women and their "cult of domesticity" were worthy of admiration.¹⁸

There are some indications that women in Tennessee enjoyed an elevated status within the family. Haywood and Cobbs published their statute interpretation in 1831. Apparently by that time, it was not uncommon for daughters to inherit land along with the sons in the family; according to the interpretation, such a pattern had been entrenched by both decisions of the court and general inheritance practices.

In the decades of 1820-1829 and 1830-1839, there are wills with bequests of land to women which represent both concerns. Understandably, Hugh Lawson White, president of the Bank of the State of Tennessee (the only bank which never suspended specie payments), showed concern for the economic affairs of his daughter, Isabella. He left her 700-800 acres of land in Knox County. Isabella was probably to have a life estate in the land since it was also left to her unnamed heirs. John Sawyers was also evidently anxious about his married daughter, Betsey Forgey, when he left her the tract of land that she lived on and stipulated that it was not to be sold for her debts. It, too, was a life estate that would descend to the heirs who supported her best. As a condition of the will, Betsey's brothers were to pay

¹⁸Nancy F. Cott, The Bonds of Womanhood: "Women's Sphere" in New England, 1780-1835 (New Haven: Yale University Press, 1977).

her two hundred dollars, and the will expressly stated that the money was to be exempt from the debts of Alexander Forgey, who was probably her husband.¹⁹

Unlike the will of John Sawyers, most of the wills did not explicitly express a concern for the daughter's financial security. The researcher has to determine the qualities which set these wills apart from those merely desiring to treat their children fairly. The individual circumstances surrounding the gift and the time of its possession are the main differences. Bequests already in possession of the legatee, or to be received at the testator's death, mainly showed concern for the present well-being of the devisee. The gift of a certain piece of property or acreage, and the restrictions on it, probably expressed more concern for the future needs of legatees.

In contrast, wills based on a desire for equal treatment divided all the property equally among the children. Frequently, the lands were to be sold and the proceeds divided. Usually the legatees would not receive the bequest until the death of their mother, although in a few cases, the will directed the division of property to be when the youngest child reached the age of twenty-one.

The majority of the wills which were written in the 1820s and 1830s devising land to women (slightly more than

¹⁹Knox County Estate Book, vol. 7, microfilm reel 3, 68-71; Knox County Estate Book, vol. 5, microfilm reel 2, 103-4.

one-third of total wills) follow the second pattern. Most testators in these years preferred to leave their estates equally to their legatees. Joseph Gallagher instructed in his will that his estate was to be divided equally among his wife and children when the youngest child attained the age of twenty-one. Abraham Low wanted his estate to be sold after his wife's death and the proceeds divided equally among his nine children. William Boyd directed the same for his three children, as did John Howser for his twelve children. Since Matthew and Mary Wallace did not have children, Matthew's estate was to be equally divided after Mary's death among his brothers, sister, niece, and nephews.²⁰

This explanation for the increase in land willed to women is less plausible when a comparison of the other decades is made. A majority of testators in each decade from 1790 to 1820 who left their land to women, left it to be equally divided among their heirs. In the ten years from 1800 through 1809, fourteen of the eighteen wills (78 percent) expressed this same wish. Even in the early years of the state's history, a majority of women were left shares of estates which were equal to men. This did not change in the

²⁰Knox County Estate Book, vol. 4, microfilm reel 2, 88; Knox County Estate Book, vol. 4, microfilm reel 2, 414-16; Knox County Estate Book, vol. 4, microfilm reel 2, 122-23; Knox County Estate Book, vol. 5, microfilm reel 2, 261-64; Blount County Wills, vol. 1, microfilm reel 139, 153-55.

1820s and 1830s although the percentage of women who were left land did increase.

Another factor possibly underlying both reasons for the increase in land willed to female relatives might be the idea that men had an obligation to protect and provide for women. Although an idea of long-standing tradition, it took on new meaning with the increased emphasis of separate spheres for males and females.

In forty-four additional wills, women were willed slaves instead of land (see Table 5). As this area did not have large plantations containing thousands of acres and the many slaves needed to work them, the bequests were usually small--one slave to each daughter. Robert Holt did have fourteen slaves (ten adults and four children) so that daughter Elizabeth Meigs received a Negro woman and three children, and the other three daughters were each left two slaves. Martha McNare (McNair) only owned four Negroes, but she left all four to her daughter, Myre. Martha McNare's bequest and John Montgomery's gift of four slaves to his daughter, Susan, were the largest gifts to any women.²¹ Even if a daughter received no land, one slave increased the value of her inheritance greatly because a male slave sold

²¹Knox County Estate Book, vol. 3, microfilm reel 2, 278; Knox County Estate Book, vol. 2, microfilm reel 1, 354; Blount County Wills, vol. 1, microfilm reel 139, 95-98.

for as much as \$540 at an estate sale.²² However, as the table shows, far more women were bequeathed land than slaves because land was more plentiful. Not every testator in these counties owned slaves, and very few of those testators who were slaveowners owned large numbers of Negroes.

The usual legacies to a daughter who did not receive land or slaves included a bed, sometimes a feather bed, and furniture, a horse and saddle, and a cow with calf. In some wills, older daughters had already received similar gifts, probably as dowries when they married, and this type of bequest represented attempts by testators to equalize what all children received.

The gains that daughters received in inheritance from their fathers, however, sometimes came at the expense of their mothers. In a study of several counties of the colonial Chesapeake region in Virginia, Lois Green Carr found that, as time passed and the areas became more settled, "widows were less likely than earlier to receive more than a dower share of property [land]."²³ The position of daughters improved during this same period in the Chesapeake.

In the East Tennessee areas studied, there is a reversal of the pattern that Carr found. Table 6 indicates that more than half of all widows in Knox and Blount Counties

²² Knox County Estate Book, vol. 2, microfilm reel 1, 199.

²³ Carr, 171.

Table 6

WIDOWS RECEIVING MORE THAN DOWER: KNOX AND BLOUNT COUNTIES

DECADE	WILLS W/WIVES	LAND	%	PERSONALTY	%
1787-1789	2	1	50.0	1	50.0
1790-1799	26	12	46.2	14	53.9
1800-1809	59	30	50.8	40	67.8
1810-1819	78	47	60.3	58	74.4
1820-1829	105	52	49.5	72	68.6
1830-1839	111	70	63.1	82	73.9
1840-1843	41	23	56.1	29	70.7
Totals	422	235	55.7	296	70.1

received more than one-third of the land their husbands owned. During the decade of 1830-1839, sixty-three percent of the widows were given more than a dower share in land. Occasionally, widows were bequeathed a moiety, or one-half, of the land, with the other half going to the children. Most often, the bequest for widows was a life estate in all the acreage with the children receiving their shares upon their mother's death.

The number is even greater for widows who received more than one-third of their husband's personal estate, with seventy percent receiving more personalty (see Table 6). Some testators left their wives only a dower share in their real estate, but left them all their personalty. The personal property included the household and kitchen furniture; frequently, it was left totally at the wife's disposal.

Livestock and farm tools were also part of the personal estate. Jacob Dyer left his wife, Annis, a life estate in the plantation where they lived (including all stock and farm tools), plus the household and kitchen furniture with which she could do as she pleased. Joseph Duncan stated in his will that Lydia was to have, in addition to a life estate in the plantation, all his personal estate, all livestock and farm tools, and all household and kitchen furniture. At Lydia's death the whole estate was to be divided equally among his children. Isaac Hair bequeathed Elizabeth one-third of the land where they lived including the house and outbuildings, all household and kitchen furniture, all farming tools, and all livestock which included horses, cattle, hogs and sheep. Isaac also gave Elizabeth permission to sell the land if she desired, which was unusual since most widows received only a life estate in the land given them.²⁴

If a widow was unsatisfied with the portion she received in her husband's will, she could express her discontent legally. In 1813, widows were granted the right to challenge their husbands' wills if no provision was made for them, or if the amounts devised were not consistent with the state's inheritance laws. A widow had six months from the time the will was probated to register her disapproval. In

²⁴Blount County Wills, vol. 1, microfilm reel 139, 32, 34, 69-70.

1841, widows who dissented to the wills of their husbands were also granted one year's support from the estate to provide for them while the will was in question.²⁵

There are no records of dissenting widows among the Blount County wills. In Knox County there are only three. John McCampbell, a Knoxville attorney, granted his wife, Nancy, one-quarter of his real and personal property with the other three-quarters divided among his two children and brother, Andrew. Nancy, proving that she also knew something about law, objected to the will. There is no record of the outcome, but under the statute Nancy was entitled to one-third of the real estate. Margaret Ramsey, in challenging Francis Alexander Ramsey's will, submitted a list of articles she had brought into the marriage. Margaret was the widow of Thomas Humes when she married Ramsey, so she owned furniture and numerous household items. The records are not completely clear, but it appears the articles sold in the estate sale were returned to her. James Anderson left no provision in his will for his wife, Mary. The will only provided for the emancipation of his slave, Hiram. Mary contested the will, but the outcome is unknown.²⁶

²⁵ Scott, 295; Tennessee, Session Laws (Oct. 27, 1841), microfiche 85, 3.

²⁶ Knox County Estate Book, vol. 3, microfilm reel 3, 283; Knox County Estate Book, vol. 3, microfilm reel 2, 255-56, 326-27; Knox County Estate Book, vol. 8, microfilm reel 3, 168, 265-66.

In sixty-four of the Knox and Blount County wills, testators granted wives support from the land rather than placing its management under the wife's control. In all but one case, there were older sons (or a married daughter and son-in-law) charged with maintaining the widow. None, however, was as specific as the will of Jacob Thomas which listed the exact amount of potatoes, turnips, grains, beef, even shoes, that the widow, Margret, was to receive. In most cases, the wife was granted a life estate in the house occupied by her and the testator, but several wills, like that of John McHaffie, instructed the widow to choose the son with whom she wished to live. The one will naming children who were definitely minors granted the wife control of the estate until the son, William, reached twenty-one, and thereafter she was to receive a maintenance from the land. William was to be apprenticed to learn a trade when he reached twelve or thirteen; thus, he was even younger in age when the will was written.²⁷ The fact that a majority of wills according a maintenance also referred to grown sons may shed some light on this type of inheritance. If the wives were older, they may have been unable or unwilling to manage a farm, and instead may have preferred to receive a portion of its benefits and profits.

²⁷Blount County Wills, vol. 1, microfilm reel 139, 260; Knox County Estate Book, vol. 4, microfilm reel 2, 322; Knox County Estate Book, vol. 2, microfilm reel 1, 26-28.

Over one-fourth of the Knox County/Blount County wills leaving inheritance to wives placed the restriction on the widow that she must remain unmarried in order to receive her bequest (see Table 7). Carr traced similar widowhood restrictions to the English manorial custom which allowed testators to protect and provide for widows "without subsidizing stepfathers or postponing unnecessarily the time when children ultimately inheriting the land would receive it."²⁸ In the colonial Chesapeake region, the practice became more frequent in the latter part of the eighteenth century just before the Revolution. Carr's explanation of "increasing pressures on family resources" does not apply to

Table 7

WIDOWS WITH RESTRICTED BEQUESTS: KNOX AND BLOUNT COUNTIES

DECADE	WILLS W/WIVES	RESTRICTED BEQUEST	%
1787-1789	2	2	100.0
1790-1799	26	6	23.1
1800-1809	59	19	32.2
1810-1819	78	24	30.8
1820-1829	105	22	21.0
1830-1839	111	30	27.0
1840-1843	41	7	17.1
Totals	422	110	26.1

²⁸Carr, 171.

this region of Tennessee, especially in the earlier years when land was plentiful.²⁹

East Tennessee testators in the decade from 1800 to 1809 decade seem most concerned that their young children receive adequate support; in the wills there were frequent references to minor children. The restrictions usually stipulated that the estate was to go to the children if the widow remarried. A concerned father might be worried that his children would receive ill treatment from a stepfather, and so provided for them in this way. Some of the restricted wills were for widows bequeathed a maintenance--an unnecessary legacy for a woman receiving support from a new husband. A few wills in this time period list grown children who would inherit the land if their mother remarried; presumably the testator preferred to have his own progeny in control of his land rather than a stepfather. The reasons for the will restrictions appear to be personal and tailored to suit the needs of the particular families.

Did such restrictions prevent a widow from remarrying? The Knox County/Blount County marriage records do not reveal any solid answers to this question. The names of widows restricted by such a will could be checked against marriage records of their respective counties, but this process may overlook some widows whose husbands' wills were probated in Knox or Blount Counties but who chose to remarry in a dif-

²⁹ Ibid.

ferent county. Frequently, the search is complicated by the fact that many of the women had daughters with the same name, making it impossible to determine conclusively if the widows remarried. For example, Polly Robertson had a daughter, Polly Ramsey, and two granddaughters, Polly Kain Ramsey and Polly Kain Luttrell, named after her. Mary McClod's granddaughter was also named Mary McClod. Nicknames used in wills are a further hindrance. When Polly Robertson wrote her own will two years after her husband wrote his, she signed the will Mary Robertson; "Polly" was apparently a nickname.³⁰ In order to speculate about the age of the widow, one must determine whether daughters were married and sons were of age. Determining the widow's approximate age is important, because a younger woman with minor children was more likely to remarry than an older widow with grown children.

The will of Samuel Love offers no such clues, because the land was to be equally divided among his unnamed children if his widow, Charlotte, remarried. One can only speculate that the Charlotte Love who married James Miller two years later was the widow of Samuel. Likewise, it is impossible to determine if Anna Kirkpatrick, widow of Martin, was the same person who married William York three years after Martin's will was written. Since the children's names and

³⁰ Knox County Estate Book, vol. 6, microfilm reel 3, 40-43; Knox County Estate Book, vol. 0, microfilm reel 1, 29; Knox County Estate Book, vol. 6, microfilm reel 3, 128.

approximate ages are unknown, the Anna who became Mrs. York could have been a daughter. The two Elizabeth Howsers who married in 1839 could have been granddaughters of John Howser's wife, Elizabeth. In 1829, the date of John's will, the couple had six married daughters, one named Elizabeth, and six sons. Alcy Tipton, widow of Reuben (1835), apparently had only a son and daughter, Perry and Castity [sic], and may have been the same Alcy who married Jabes Thurman in 1846, but it is impossible to know for certain. Perhaps the Mary D. Houston who married Hezekiah Mitchell in 1819 was the widow of William (1815), but there were several Houston families in Blount County and Mary was a common name. There are also Mary Houstons who married in 1820 and 1826.³¹

Most of the records simply do not yield enough information upon which to base any conclusions concerning the remarriage of widows. Two of the restricted widows definitely did not remarry, which may be the most significant evidence when coupled with the fact that few of the women's names were found in the marriage records. Hannah Stirling and Rebecka Anderson were still widows when they wrote their own

³¹Roscoe Carlisle d'Armand and Virginia Carlisle d'Armand, comps., Knox County. Tennessee Marriage Records: 1792-1900, 2 vols. (Knoxville: Family Record Society, 1970), 509-10, 593, 639, 1023; Blount County Marriage Record, vol. 0, compiled by W. E. Parham, 1931, microfilm reel 139, 42, 132-1/2, 143.

wills seventeen and nineteen years respectively after the demise of their husbands.

In fourteen wills, wives were given absolute authority over an estate to control and dispose of it as they wished. Most of these testators either had minor children or, more usually, had no children. These devises gave more control and property to the widow than the law allowed widows of intestate estates; the statute granted childless widows only one-third dower and, after 1827, one-half personalty. Robert Chapman left everything to his wife, Ann, to enable her to care for their children. Devereanse Gilliam, having no children, left his entire estate to Ede; Nathan Markland did the same for his wife, Mary.³²

In thirteen additional wills, wives were given authority to dispose of their husbands' estates after other devises had first been made. Benjamin Bladsoe (or Bledsoe) willed two dollars to each of his ten children, then granted the rest of his estate to his wife, Sary, to dispose of as she wished. John Sanders left each of his five children one dollar, one dollar to Paschal Black, and the balance of his estate to Patsy, his wife. Hannah Chamberlain received all of her husband's estate except for eighty dollars left to his illegitimate son. Elijah Brown left a maintenance for

³² Knox County Estate Book, vol. 0, microfilm reel 1, 12-13; Knox County Estate Book, vol. 1, microfilm reel 1, 305-6; Knox County Estate Book, vol. 2, microfilm reel 1, 348.

his mother, a horse for one brother, and five shillings to each of his other brothers and sisters; Elijah's wife, Polly, received the remainder of the estate.³³

After leaving each of his children one dollar, William Montgomery bequeathed his wife, Rebecka, all his real and personal property "to dispose of by sale or gift or in any way she may think proper for her benefit."³⁴ In case Rebecka should die intestate, William made further provisions in his will for his son, daughter, and grandson to each receive a slave, and the proceeds of the remaining property to be divided among the heirs. There is no record of Rebecka's will in the time period studied. One testator, Hugh Lawson White, named his wife as trustee over his real and personal property although he had already decided upon its division. White also listed the items which Ann Peyton, a wealthy widow, had brought into the marriage and which she was "absolutely and unconditionally to do with as she pleas[ed]."³⁵

Although there are female wills written in the earliest years of Knox and Blount Counties, a comparison of the total number of wills in each decade with the number of

³³ Knox County Estate Book, vol. 1, microfilm reel 1, 190-91; Knox County Estate Book, vol. 4, microfilm reel 2, 377-78; Blount County Wills, vol. 1, microfilm reel 139, 204, 252-53.

³⁴ Knox County Estate Book, vol. 5, microfilm reel 2, 248-50.

³⁵ Knox County Estate Book, vol. 7, microfilm reel 3, 68-71.

female wills shows that only a small percentage of women left wills devising their property. However, the numbers do show that more women wrote wills as the century neared its halfway mark. In the last four years of the study (1840-1843), the same number of women (twelve) left wills as in the previous ten years.

Fewer women were named to execute estates as time passed, but this is probably attributable to the increased age of the women rather than their gender. Very few women witnessed any of the wills. It is likely that those wills with female signatures were witnessed by women because of the impending death of the testators and the absence of males to make the documents legal.

Testate estates appear to have adhered closely to the intestate inheritance statute if there were no sons to inherit the land. The statute provided for daughters to inherit the land if a family had no sons, and this pattern appears to have been followed in the wills that mention no sons. There is evidence in the wills that many families preferred to give their children an inheritance when they married, or when they reached the age of twenty-one. Such wills leave only a token gift of one or two dollars to older children who have already received legacies.

There are two possible reasons for the increases in numbers of women receiving land in the 1820s and 1830s. One reason might be concern for the financial well-being of

females in a period of economic downturn, since a woman's land could not be sold for her husband's debts. The other reason was the wish of parents to treat their children fairly by leaving equal amounts of land to them. Both reasons can probably be ascribed to the prevailing attitude that men must take care of women and provide for them. A few women were willed slaves instead of land. The bequests were usually one or two slaves with the largest gifts being four slaves to one person. Most slaveowners in this area did not own large numbers of slaves; land was much more plentiful than slaves.

More than half the total number of widows in Knox and Blount Counties received more than a dower share of one-third the real estate their husbands owned at death. Seventy percent of the widows received more than one-third the personal estate their husbands left. A widow had the right to dissent to her husband's will but few did. There are no records of any dissenting widows in Blount County and only three in Knox County.

Sixty-four wills granted the widow a maintenance or support from the estate rather than leaving her in charge of it. The testators leaving this type bequest appear to have older children, which may mean the widow was less able, or less willing, to care for the farm. More than one-quarter of the wills placed restrictions on the widow that she remain unmarried. Because of the similarity of names, the use

of nicknames, and the possibility that widows may have remarried in other counties, it is impossible to determine if this restriction prevented widows from remarrying.

A small number of wills gave a widow absolute authority over an estate left to her. Most of the testators leaving these wills had no children, although a few had minor children. Some additional wills left devises to others, and then gave the widow authority over the remainder of the estate.

CHAPTER V

CONCLUSION

The focus of this thesis is the legal status of women in Tennessee from its territorial years through the year 1843, when a married women's property act was passed by Tennessee's Senate but failed to pass in its House of Representatives. Research of the court records of Knox County, Jefferson County, and Blount County concentrates on several specific areas in order to determine women's legal status in the three counties. The study encompasses female inheritances and the widow's dower, divorce, and married women's property rights including *feme covert* conveyances and marriage settlements or contracts. Also, an examination of Tennessee statutes determines how closely courts followed the laws when deciding cases.

Marriage laws in Tennessee dealt mainly with preventing miscegenation, bigamy, and consanguinity, or with restricting the ministers who performed the marriages. Legislators only enacted one law which exemplified the common law principle, "unity of person," in which a husband and wife were legally treated as one person. The statute provided that any lawsuits which were pending with single women either as plaintiffs or defendants would have the husbands enjoined as co-parties if the *femes soles* married. The law could be

interpreted as advantageous to women, especially in cases of indebtedness in which the husband became responsible for his wife's debts. On the other hand, a wife might have preferred to handle alone any business managed before the marriage. More probably, the law reflected the concern of creditors.

Tennessee women probably made greater gains in the area of divorce than in any other field. Tennessee's divorce statute, a rather progressive one for the time, was the first enacted by a southern state. The law allowed absolute divorce granted by the superior court or by the legislature, later on by circuit and chancery courts. The residency requirement was only one year, while in Connecticut one had to live in the state for three years before applying for a divorce. Desertion, the complaint most commonly charged by women, had only a two-year waiting time before a spouse could petition for the divorce. This was a fifty percent reduction from Pennsylvania's time limit of four years.

Either spouse was allowed to obtain a divorce for their partner's adultery, although one penalty did seem more severe for women. An adulterous wife was prohibited from conveying or devising the property she owned if she later lived with the person with whom she committed adultery. There were no such property restrictions for husbands convicted of adultery. Husbands, however, were required to support their wives and children if they were found guilty

of adultery. Wives of adulterous husbands also retained control of any property they owned or any left by their husbands. Only two women charged their husbands solely with adultery while nine men leveled such charges at their wives, probably indicating that there were different standards of morality for men and women. Husbands accused wives more frequently of adultery, but desertion and adultery coupled with desertion followed closely in numbers.

As the time period progressed, lawmakers helped women by making it easier and less costly for them to obtain divorces. In all likelihood the reforms were motivated by an assumption that the male legislators had an obligation to take care of helpless females. As early as 1836, they gave women full legal capacity for initiating lawsuits in their own names without a "next friend" to act for them. Women no longer needed to publish a newspaper notice for four weeks requesting an absent spouse to appear in court. If a woman petitioned for a divorce and it was granted, the husband had to pay all legal costs. A wife could obtain a divorce in Tennessee after two years' residence even if the causes for the divorce occurred in another state. By 1842, absolute divorces were authorized on the ground of cruelty; previously, only bed and board divorces had been allowed for this complaint. The same amendment entitled a wife to a portion of her husband's real and personal property regardless of the divorce charge.

As the number of divorce petitions almost doubled in the counties studied, more than half (55.2%) of the petitions filed from 1830-1839 were from women. This increase in petitions filed might mean that divorce was more acceptable in Tennessee. More likely, the greater percentage of female complainants reflected the facts that it was easier for women to obtain divorces, that female ideas about marriage were changing, and that women were less likely to stay in unsatisfactory marriages. Although the changes were small and the reform gradual, a woman was given more control over her life with the ability to obtain a divorce from a marriage partner who was guilty of desertion or who was abusive. By divorcing her husband on the grounds of adultery, Catherine Chunn also was able to retain her property, thus averting a life of poverty for her and her children.

The private examination for conveyances by married women was a means for courts to discover if wives understood they were surrendering the rights to land they owned or held jointly with their husbands, or if there was coercion by the husbands to force the sale. Although the private examination was not a foolproof method and probably allowed certification of some deeds by women who were coerced, it offered more protection for married women than the conveying law of Massachusetts which only required the wife to sign the deed at home if it were acknowledged in court by her husband. Therefore, Tennessee's adoption of North

Carolina's law requiring wives to be questioned apart from their husbands represents a legal protection enjoyed by the state's married women during the time period studied. Evidence that the law was strictly enforced by Tennessee courts enhances women's legal status even more. Tennessee legislators also facilitated separate examinations by allowing court officers to question sick or elderly wives in their homes, and permitting examinations in the courts of other counties or states rather than solely in the county where the land was located. Again, the paternal attitude of the legislature probably prompted reforms in the law. The courts were evidently strict in approving powers of attorney for married women, too. Knox was the only county to incorporate powers of attorney into their court records, but three of the four records document that the wife was privately examined.

In the records of the counties studied, there is no evidence of any marriage settlements or contracts. Additional study of registered deeds and county court minutes is needed before one could say conclusively that none were written; however, county residents did not possess the wealth which prompted the settlements elsewhere. Will stipulations which secured land to a woman had the same effect as marriage settlements. In one area will there is evidence of this type bequest which specifically restricted the land from being sold for debts. Two wills, those of a

husband and wife, created trusts for a married daughter in which she was prohibited from receiving more than the money's interest. Another testator enumerated the items that his wife, a widow, possessed when they married and which were hers to devise as she pleased. These wills produced the same results as marriage settlements or contracts without creating separate documents.

Tennessee's dower law allowing a widow one-third of the real property owned at her husband's death was not as beneficial to women as the laws in states which allowed widows one-third of all the real estate owned at any time during the marriage. However, Tennessee did permit a widow to receive a dower in personalty which some states disallowed. There was also a statute which prevented a husband from defrauding his wife of dower by conveying property shortly before his death; such a conveyance was annulled by the courts. According to the dower law, the dwelling with its improvements were included as a part of the widow's share. This would have given a widow some security. As a measure to help women with no one to provide for them, widows of intestates were allowed one year's support in crops and provisions from the estate. A widow could use any of the estate's tools, livestock, or slaves to help her raise the crop. Originally, any excess over the year's support was subject to creditors; however, that section was later repealed. Another statute expanded the rights of widows by

allowing them dower in their husbands' equitable estates. This meant that if a couple built a home on land owned by the husband's father, the wife would still be entitled to dower in the house and land if both the father and husband died before the son could receive a deed to the land.

Dower apportionments were usually handled quickly and according to the law with twelve commissioners (later five) partitioning the land. This is evidence that both the community and the courts respected the dower share and did not doubt the widow's right to receive it.

Although women did not write many wills during the time period, it is significant that in each of the two counties there is a female will among the earliest written wills. In the later years of the study it is apparent that more wills were being written. In the final four years, the combined number of female wills jumps to a larger percentage than any other decade since the first when a woman wrote one of four wills probated. This is probably a result of both widows and other female heirs receiving more inheritance in the period 1830-39, thus owning more property to devise. After the Revolution all states abolished primogeniture, resulting in all children receiving more nearly equal inheritances and daughters or other female relatives receiving land more often. The increase in the number of Tennessee women receiving land in the 1820s and 1830s was influenced possibly by two reasons: troubled economic times because of the

Panics of 1819 and 1837, and parents wishing to treat their children equally. Both, however, may have been the result of the idea that a father was the "provider" of his family, an idea which was emphasized by the "cult of domesticity" and separate spheres for women. Although there are wills that show concern for female economic security, most of the wills divide the property equally among the children. This does indicate that women's status, at least within the family, was elevated. If a father had no sons, he usually left all his land to his daughters. Although more women received land because it was plentiful, some women received slaves in place of land. The bequests were usually one or two slaves, but they did increase considerably the value of the inheritance.

As some areas of the country became more settled, women were less likely to receive more than their dower share. However, in the later decades of Knox and Blount Counties, women usually received more than the one-third to which they were entitled. This was true both for land and for personalty: between 1800 and 1843 approximately fifty-six percent of the widows received more than one-third of their husbands' land and seventy percent received more than one-third of their husbands' personal estate. If a widow was devised less than a dower share, she had six months to dissent to the will. Only three widows dissented, perhaps reflecting the fact that women usually received more than dower. Some

women, more often those with either no children or with minor children, were given absolute authority over an estate's management and disposal.

Research in the court records of Knox County, Blount County, and Jefferson County, as well as the laws of Tennessee during the period 1792 to 1843, demonstrates that women's legal status improved gradually but steadily during this era. It was not a linear progression in all areas of the law, however. Instead, notable gains were made in the areas of divorce and inheritance. In many areas of the country, divorce law reform was still bitterly opposed in the late nineteenth century. Yet in these Tennessee counties, divorces became easier and less expensive to obtain in the 1830s and 1840s, and during the entire period studied, approximately half of all divorces were sought by women. Similarly, legal protections for married women's property rights were strictly enforced, and widows and other female heirs experienced an increase, rather than a decrease in the property they inherited.

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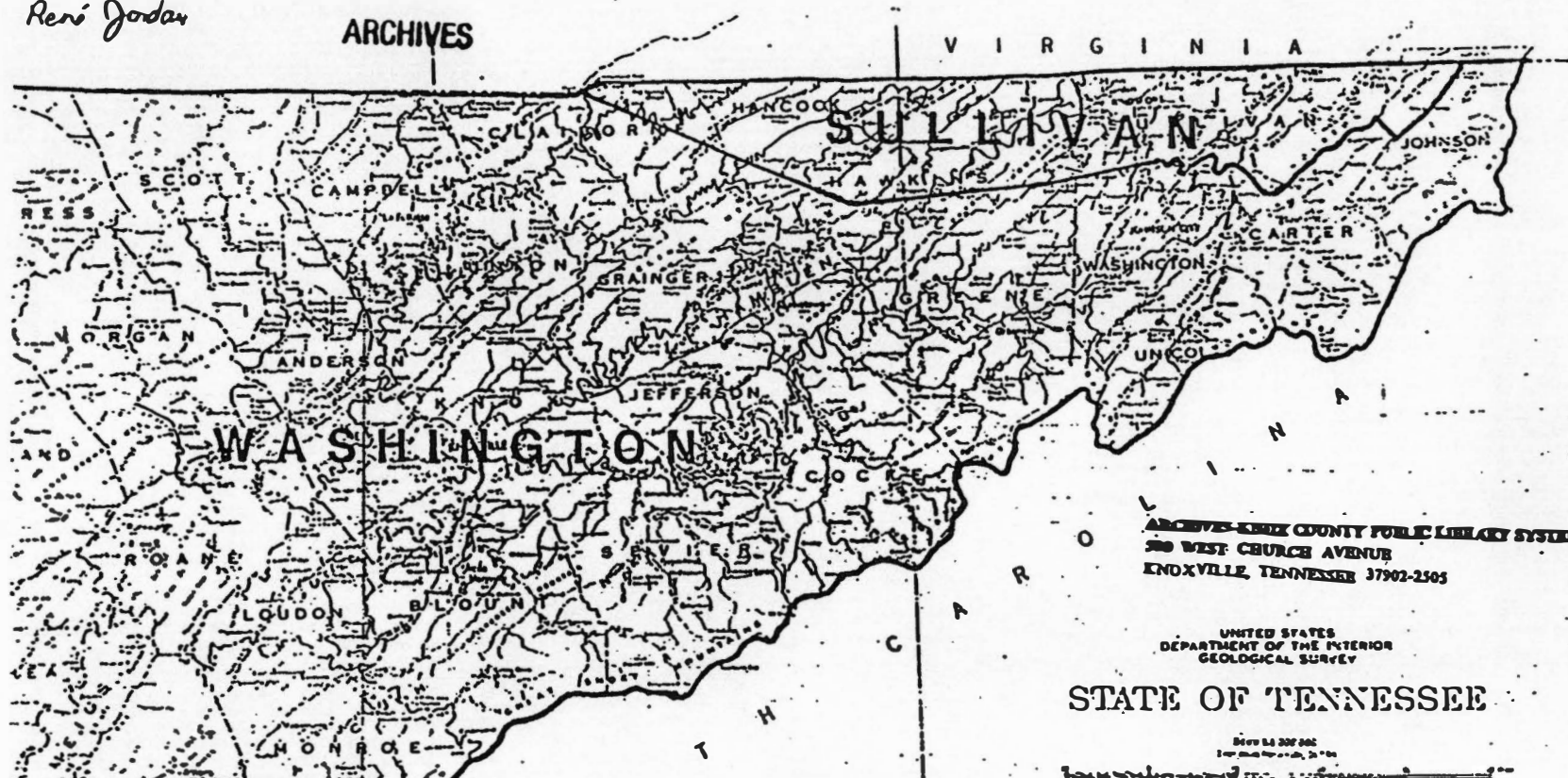
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APPENDIX

Rene Jordan

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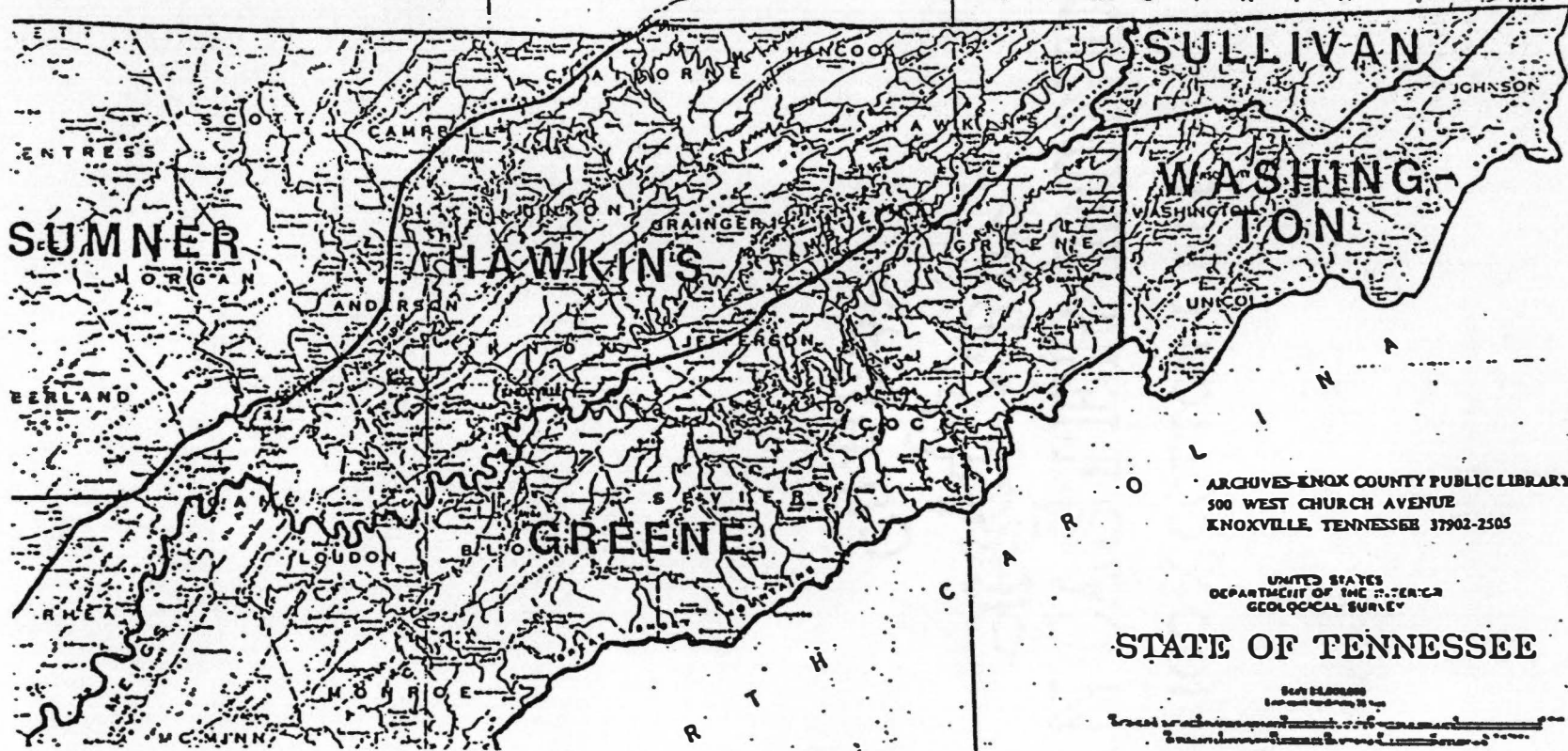
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1 inch = 1.6 miles

Fig. 1. Washington County, N. C. (Sullivan County, N.C. was formed after the N.C.-Va. boundary line had been settled in 1779.) Map: cabinet 3, drawer 2, folder 10, Knox County Archives, East Tennessee Historical Center, Knoxville, Tennessee. Map adapted by Rene Jordan, Head of Technical Services, Knox County Public Library System. Permission to use map granted by Mr. Jordan.

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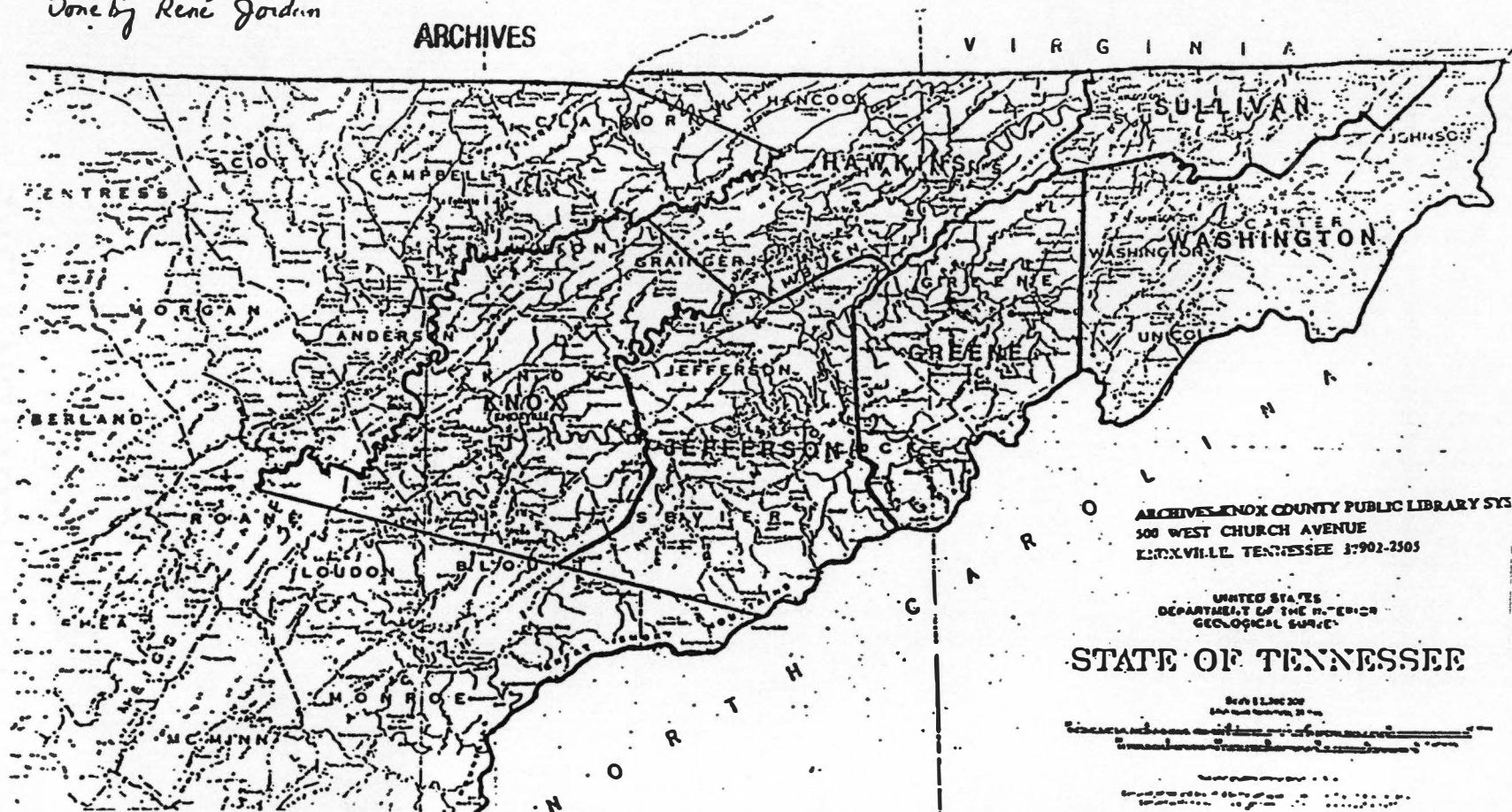
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Fig. 2. Counties in existence when North Carolina ceded its western lands to the U.S. government in 1789 (not pictured: Davidson and Tennessee Counties). Map: cabinet 3, drawer 2, folder 10, Knox County Archives, East Tennessee Historical Center, Knoxville, Tennessee. Map adapted by Rene Jordan, Head of Technical Services, Knox County Public Library System. Permission to use map granted by Mr. Jordan.

Done by René Jordan

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Map of Tennessee, 1792

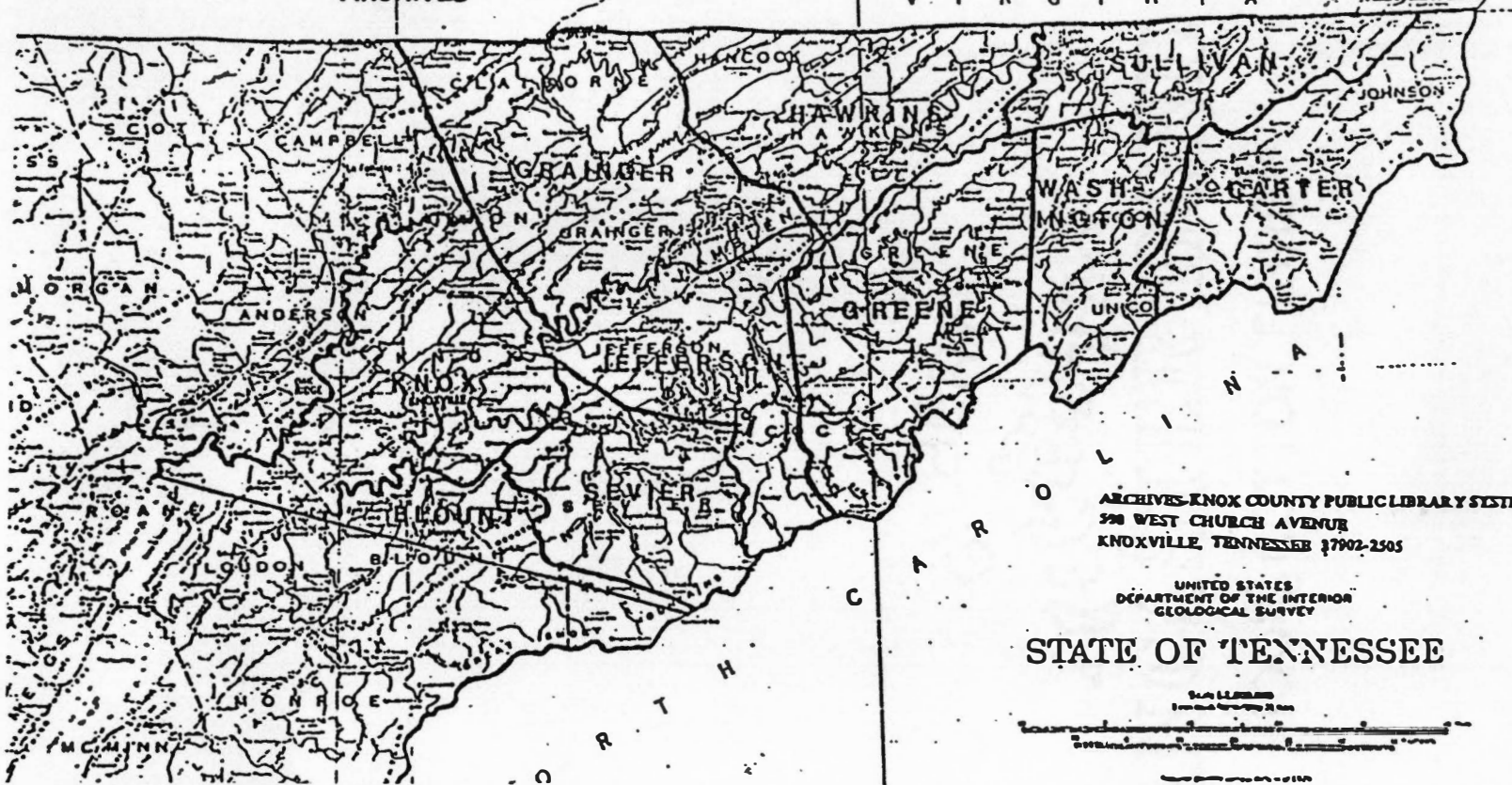
Geological Survey of the United States
Tennessee State Geological Survey

Fig. 3. Knox and Jefferson Counties formed in 1792. Map: cabinet 3, drawer 2, folder 10, Knox County Archives, East Tennessee Historical Center, Knoxville, Tennessee. Map adapted by René Jordan, Head of Technical Services, Knox County Public Library System. Permission to use map granted by Mr. Jordan.

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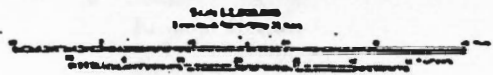


Fig. 4. Blount County created in 1795. Map: cabinet 3, drawer 2, folder 10, Knox County Archives, East Tennessee Historical Center, Knoxville, Tennessee. Map adapted by Rene Jordan, Head of Technical Services, Knox County Public Library System. Permission to use map granted by Mr. Jordan.

VITA

Margaret Ellen Latting Crawford was born in Memphis, Tennessee, on November 12, 1945. She graduated from Collierville High School, Collierville, Tennessee, in May, 1963. She received the Bachelor of Science degree in History from Memphis State University in May, 1967. She received the Master of Arts degree in History from the University of Tennessee in May, 1992.